S. HRG. 107–786

PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

MAY 2, 2002

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C O N T E N T S

MAY 2, 2002

SENATORS

WITNESSES

APPENDIX

PENDING LEGISLATION

THURSDAY, MAY 2, 2002

U.S. SENATE,
COMMITTEE ON THE VETERANS' AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m., in room SR–418, Russell Senate Office Building, Hon. John D. Rockefeller IV (chairman of the committee) presiding.

Present: Senators Rockefeller, Graham, Jeffords, Akaka, Wellstone, Murray, Miller, Nelson, Specter, and Hutchinson.

Chairman ROCKEFELLER. Good morning, everybody. I apologize that once again Senator Nelson was so late. [Laughter.]

Do you want a minute to shoot me down on that one?

Senator NELSON. Mr. Chairman, I have not been here long enough to learn how to be late, but I am working on it.

Chairman ROCKEFELLER. OK. Well, that is a good shoot-down.

Senator Akaka, I apologize.

We have got a ton of things to do and I want to talk about some of these things. We have got VA disasters, I mean, how VA handles disasters for the country. [Laughter.]

Yet we cannot also forget what we are about on a normal day at the Department of Veterans Affairs, which is serving our veterans.

This morning we are going to look at a lot of legislation, hear points of view about it, and this will not be a markup as such. The legislation, as far as I can see, covers almost every aspect of veterans' lives—from annual cost-of-living-adjustment for compensation, education benefits, to care and services for women's veterans, mental health care and research. I want to take my prerogative, so to speak, to highlight a couple of these.

A couple pieces of legislation recognize that the VA—which, as constantly needs to be said, is the Nation's largest integrated health care system—can and must play a larger role in emergency preparedness. This is something I would think the VA would have mixed feelings about. In effect, you are being left out, by the way I read it, from the Ridge operation. That may be the way the world works, but that is not the way the world ought to work because you are basically better at Federal health care than anybody else.

You shared skilled caregivers and you supply help to overwhelmed communities on a regular basis. VA has been there for every single major domestic disaster of the last 20 years—Oklahoma City, Hurricane Andrew, Floyd, September 11th, everywhere—you have been there. But most in Government, and most in public health, and most out there in the public, have no idea

how much VA contributes, and it is a subject of some annoyance to me that our Government does not understand that.

So, in order to highlight the VA's already enormous commitment to providing medical care during disasters, I introduced, with Senators Specter and Akaka, legislation to recognize VA's emergency missions. The legislation before us would also turn VA's research expertise to preventing the illnesses and the injuries that might arise from the use of terrorist weapons and would create an office to coordinate VA's disaster planning. In other words, that is my way of trying to help VA get a seat at the planning table.

We also have legislation before us to waive the drug copayment for veterans with incomes between $9,000 and $24,000, all of whom are struggling to meet VA's new copayment rate of $7 per prescription. Despite, as I made clear at our last hearing, the VA's embarrassing failure to provide our Nation's aging veterans with a true spectrum of extended care services, the authority for doing such expires very soon. I have introduced legislation to extend those authorities while we continue to push VA to step up its long-term care efforts.

Other issues press our aging veterans, including hearing loss and tinnitus that may, for some, result from their military service. Legislation before us would help VA rate service-connected hearing loss more fairly and determine scientifically whether service in certain military specialties might be associated with an increased risk of hearing loss later in life. This would help solve the problem of looking at everybody in the world who has a hearing problem and figuring out the fairest way to limit who gets to be presumed eligible for benefits?

Other legislation on today's agenda would authorize the VA to extend its sexual trauma counseling and treatment programs beyond their current expiration date.

We have a very ambitious agenda before us, including many bills sponsored by many colleagues on this committee, including one who will be coming, Senator Nelson, Bill Nelson, the lesser Nelson. [Laughter.]

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Good morning. We meet today, as I'm sure I don't have to remind our witnesses, in a world where priorities have changed from "business as usual." The attention of the government, certainly here in Congress, has been focused on protecting our Nation against the possibility of future terrorist attacks.

The challenge that VA—and all of us—must face is preparing for emergencies without forgetting the reason that we are here today: to serve the men and women who served this nation. This morning, we will be reviewing legislation that would affect almost every aspect of veterans' lives, from the annual cost-of-living adjustment for compensation, to changes in education benefits, care and services for women veterans, and mental health care and research. I would like to highlight a couple of items in particular.

Several pieces of legislation before us recognize that VA—the Nation's largest integrated health care system—can and must play a larger role in emergency preparedness. VA has shared skilled caregivers and supplies with overwhelmed communities following every major domestic disaster of the last two decades, including the Oklahoma City bombing, Hurricanes Andrew and Floyd, and the September 11th attacks, but too many in government, and in public health, still have no idea how much VA contributes.

In order to highlight VA's already enormous commitment to providing medical care during disasters, I introduced with Senators Specter and Akaka legislation to recognize VA's emergency missions. Legislation before us would also turn VA's research expertise to preventing the illnesses or injuries that might arise from the use of terrorist weapons, and would create an office to coordinate VA's disaster planning.

We also have legislation before us to waive the drug copayment for low-income veterans. Although veterans with incomes of less than $24,000 a year are exempt from copayments for most VA health care services, the income threshold when it comes to prescription drugs is just $9,000 a year. This problem was compounded by VA's decision last year to increase prescription copayments from $2 to $7—an increase that may be reasonable by industry standards, but unduly burdens veterans with incomes between $9,000 and $24,000. I have been joined by many colleagues in offering a bill that would exempt those veterans from prescription copayments.

We met in this room just a week ago to highlight again how desperately our nation's aging veterans need a true spectrum of extended care services. In 1999, Congress passed legislation that required VA to provide nursing home care to any veteran who is 70% or more service-connected disabled, and non-institutional care to all enrolled veterans. We placed a four-year expiration date on these programs so that we could adequately study and adjust them if needed. VA's embarrassing failure to make non-institutional long-term care programs a reality has denied crucial services to veterans, and has certainly prevented us from studying their effects. I have introduced legislation on today's agenda to extend these authorities for five more years, and will demand that VA step up its long-term care efforts.

Other issues press our aging veterans, including hearing loss and tinnitus that may, for some, result from their military service. Legislation before us would help VA rate service-connected hearing loss more fairly, and determine scientifically whether service in certain military specialties might be associated with an increased risk of hearing loss later in life. Other legislation on today's agenda would authorize VA to extend its sexual trauma counseling and treatment programs beyond their current expiration date, so that veterans who experienced assault or harassment during military service can continue to depend on these critical programs.

We have a very ambitious agenda before us, including many bills sponsored by my colleagues on this Committee. This hearing gives us an opportunity for public debate on the important issues that the proposed bills would affect, so that the Committee can give them full consideration.

I look forward to hearing from my colleagues and our witnesses.

Chairman ROCKEFELLER. This hearing gives us an opportunity to discuss this, for you all to discuss it, for the VSO's to discuss it, and I look forward to what my colleagues might have to say in the way of opening statements, starting with my most special colleague, Senator Specter.

Senator SPECTER. Thank you very much, Mr. Chairman. Thank you for convening this hearing on a variety of legislative subjects.

The issues which veterans confront today are numerous. We face increased demands for veterans' health care and veterans' long-term nursing care, and the budget is never adequate. Each year, through the efforts of Chairman Rockefeller and others on this committee, and others in the Senate, we have increased VA's medical care budget—but still there is a decisive shortfall.

So we welcome an opportunity to hear VA's testimony today. Today is an especially busy day with Senator Byrd—you know Senator Byrd—having scheduled hearings on homeland defense all day, and there is also a Judiciary Committee executive meeting today, so, while I will stay as long as I can, I will have to depart early. But I will review the transcript of today's hearing.

Mr. Chairman, I appreciate your being here today, and appreciate your statement for the hearing record.

Thank you, Mr. Chairman.

[The prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Good morning, Mr. Chairman. It is a pleasure to be with you this morning at this hearing to gain the on-the-record views of VA, and the veterans service organizations, on the large agenda of legislation that the Committee will consider before the end of the year.

I am pleased that you have asked the interested parties to provide their views on the record—and that they provide them early in the process; I support that goal. We do not want to rely entirely on informal communications in fashioning our mark-up agenda. Nor do we want a repeat of last year's experience when VA voiced its views on certain legislative issues only after those issues had already been informally conferenced with the House. This year, VA will need to speak up now so that we can benefit from its thinking early in the process. With the assistance of staff to sort through the views of the witnesses on all 27 bills on this agenda, we will then be postured to act wisely on the important policy questions before the Committee.

Of course, I hope to learn this morning that there is unanimous support for the bills on the agenda that I have introduced. We have done good work in this Committee in updating and increasing VA educational assistance benefits, but we need to do more—especially for the widows and surviving children of service members who were killed in action. I look forward to testimony on S. 1113, S. 1517, and S. 2231.

VA—in a departure from its recent position that Congress enacts too many "unfunded mandates"—has proposed that we enact a ground-breaking new mandate: that VA be obligated to provide (or pay for) care to women veterans' newborn babies during the first 14 days of life in cases where VA provided delivery services. We need to look carefully at that proposal. In addition, we need to look closely at four key bills designed to enhance VA's preparedness for response to terrorism.

I look forward to the witnesses' views on these, and other, proposals. If the witnesses cannot support certain items on the agenda, we need to hear that now—and we need to hear how they would improve these bills. For all of us have the same goal in mind: to fulfill our commitment to the Nation's veterans. As I have said many times, I am here in Congress to, figuratively, collect the bonus denied to my father, Harry Specter, and other World War I veterans. Working with VA and the service organizations, we will fulfill that commitment.

Chairman ROCKEFELLER. Thank you, Senator Specter.

Actually, I do know Senator Byrd. I do. [Laughter.]

Senator Akaka is next on our list here.

Senator AKAKA. Thank you very much, Mr. Chairman, and welcome to our panel to the committee. Along with my friend, the chairman of the committee, I am cosponsor of two important bills that represent the first step in acknowledging the Department of Veterans Affairs' critical role in preparing for, and responding to, natural disasters and terrorist attacks.

S. 1561, strengthening the bioterrorism preparedness through expanded natural disaster medical systems training programs is one of them. Contrary to current press reports, the Federal Government is not unprepared for a biological attack. However, preparedness levels are not uniform or consistent across the United States, and there are serious problems. So, while not unprepared, we are clearly underprepared.

Strengthening the public health system is very important and is being addressed by several congressional and administrative initiatives. Creating a critical line of defense against bioterrorism must involve health care professionals.

Senator Rockefeller and I have proposed to use the existing emergency communication infrastructure, disaster training programs and community partnerships within the Nation's 163 Veterans Affairs hospitals to train both VA hospital staff and local health care providers in recognizing and treating victims of biological weapons. We must make sure that first-line responders to bio-

terrorism events, doctors and nurses, have the training and resources necessary to respond immediately to an incident and the capacity to cope for the several hours or days it will take before Federal help can arrive.

The second bill, S. 2187, the Department of Veterans Affairs' Emergency Medical Care Act of 2002, is pending. When VA has offered medical care to the general public during every major U.S. disaster since Hurricane Andrew, it has done so without the statutory authority to care for nonveterans and nonactive military personnel. Our legislation would provide this authority.

Already an active participant in disaster response and preparedness, VA partners with DOD, FEMA, HHS to form the National Disaster Medical System. VA, also, is an emergency responder through the Federal Response Plan.

Because of the hard work done by VA employees, this legislation does not need to create new VA programs, nor authorize any additional funds. I commend the dedication and initiative of the 225,000 VA personnel and am confident that they will continue helping all Americans respond to major disasters and medical crises.

Thank you very much, Mr. Chairman, for having this hearing on pending legislation.

Chairman ROCKEFELLER. Thank you, Senator Akaka.

Senator Nelson?

Senator NELSON. Thank you, Mr. Chairman.

I certainly want to thank our witnesses for being here today to discuss legislation that will affect our Nation's veterans and extend my appreciation for all of your efforts, as well as yours, Mr. Chairman, on behalf of our Nation's and certainly Nebraska's veterans.

There are clearly some excellent initiatives that are on the discussion list for today, and in a perfect world, we could afford, and we could pass every bill that is put before us. But the truth is that we are faced, though we are a great country with vast resources, we are faced with a limited amount of those resources when it comes to tax dollars. As a former Governor, I have some experience with finding ways to balance budgets and make them work.

But we must, in fact, take care of our Nation's veterans, provide the best benefits that we possibly can, certainly those that we can afford. Now this may require our committee, with the help of people like we have here today to prioritize the initiatives, because very often the prioritization will help us reduce the number of initiatives to those that are most important and that we can, in fact, afford.

But one issue that comes to mind is in a rural area or a metropolitan area that veterans are affected differently by their circumstances, and one issue that comes to mind and which has caused me a great deal of concern is that a farmer's farm equipment is counted in his assets for eligibility determination, and that creates a hardship to where you can be equipment rich and otherwise income poor and unable to, one should not have to sell their farm equipment in order to make their ends meet because of the need for health care, particularly if we can find a way to establish need on the basis of true ability to pay.

I hope that we are going to be able to work our way through that, and other issues today, and I appreciate very much, again, your being here.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Nelson.

Senator Wellstone?

Senator WELLSTONE. Mr. Chairman, if Senator Nelson needs to be in and out, I will follow him. I cannot stay real long, but my understanding is that you were in a real hurry, Bill, is that right? Bill, do you want me to follow? I can follow you if you are in a real hurry. I heard you wanted to—I will follow you.

Go ahead.

Senator NELSON of Florida. Too much protocol here.

Senator WELLSTONE. Go ahead.

Chairman ROCKEFELLER. Senator Nelson from the great State of Florida.

STATEMENT OF BILL NELSON, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON of Florida. Mr. Chairman, you have the full Nelson here at this end of the table. [Laughter.]

Chairman ROCKEFELLER. I spent my entire life growing up with another Nelson, who was Governor of New York. [Laughter.]

And now I have two of them.

Senator WELLSTONE. Mr. Chairman, I cannot resist this. Having been a college wrestler, a full Nelson is illegal. [Laughter.]

Senator NELSON of Florida. Mr. Chairman, I wanted to bring to the attention of the committee a matter that you are going to consider, which has grave consequences for veterans. I might say that we have another piece of legislation to rename a veterans center down in Florida after one of the great heroes in Florida, but let me address my remarks to the matter of grave concern.

Veterans' disability payments by law cannot be assigned. There is reason for that, and that is that the Nation is trying to compensate the veteran for their disability that has been caused in the line of duty, and therefore the law said that that is a personal payment to the veteran for the disability that that veteran has incurred in the service to his country—thus, no assignment to another person.

But some "get rich quick" operators have figured out a scheme that if the veteran deposits his disability check in a joint checking account, then that other entity can draw out the money, and does so with the concurrence of the veteran by offering quick cash to the veteran, paying as low as 30 cents on the dollar for a period of 8 or 10 years of the veteran's payments. Now that is a total bastardization of what was intended to be the veterans' disability payments system, where we are trying to honor the veterans for their service to this country. Of course, it is enticing that a veteran might have a quick cash need, and so he exchanges 10 years of his payments, and he only gets 30 cents on the dollar, and yet it is legal because they are taking it out, but it is not the spirit of the law, ergo the law says clearly you cannot assign a veteran's benefits.

So the legislation would make this practice illegal. Now this is happening, and there are some 30 websites nationally. It has par-

ticularly affected my State. My former office manager's father here in Washington, 100-percent disabled, he gets solicited all of the time in the mail for this kind of stuff. It ought to be stopped.

This bill, which it was called to my attention because we have got a lot of veterans in Florida, as you know. We have got 1.7 million veterans, and we have got about 245,000 in Florida that are on disability payments, and of course this was called to my attention because of the "get rich quick" kind of scheme.

Without me going out and really pushing this legislation, 15 of our colleagues have cosponsored it. A couple of members of this committee have cosponsored. As a matter of fact, another member of this committee that we all have a great deal of respect for as a veteran, Senator McCain, has come to me and wants to help push this legislation.

Now I just learned, as I walked in the door, something troubling. I have had enormous cooperation from the Veterans Department on this. As a matter of fact, they have issued press releases on this. I have got all kinds of testimony from former Secretaries of the VA, and the VA Inspector General, and I could quote all of those quotes, and I was just told by the staff walking in here that the VA is going to testify against this legislation because they think that veterans are big boys. Well, veterans are big boys, and they can make up their own minds on things——

Chairman ROCKEFELLER. And girls.

Senator NELSON of Florida. And women. But the fact is, is this is a matter of what was the intention, the legislative intent in the original law, which wanted to honor our veterans and to compensate them for their service to the country. And so I respectfully put it in the wisdom of this committee, Mr. Chairman, to see if you all do not think that this practice needs to be stopped dead in its tracks.

Thank you, Mr. Chairman.

[The prepared statement of Senator Bill Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Mr. Chairman, I am pleased to appear before the committee to talk about two bills which I have introduced and being discussed today.

The first is the Veterans Benefits and Pensions Protection Act. Senator McCain and I introduced this bill to protect our veterans from financial predators who offer "instant cash" in exchange for future pensions or disability pay.

Current law prohibits the direct sale of a veteran's pension or disability benefits. These payments are a tax-free, monthly check from the government, meant to provide important financial support to veterans who were disabled or wounded in service to our country. In the state of Florida alone, 245,000 veterans or their survivors received such compensation last year; and the Department of Veterans Affairs paid out nearly $21.3 billion dollars nationwide.

To get at this pot of money, some companies have used a loophole that enables them to enter into a contract with veterans and offer them "instant cash" in exchange for future benefits.

These contracts require veterans to sign away their disability benefits or pensions for a certain period—often eight years. In exchange, companies give them a lump-sum cash payment, typically valued at only thirty cents on the dollar. In certain cases, these companies also require veterans to put up collateral, such as taking out a life insurance policy, potentially leaving a veteran's family out in the cold.

The VA has called this practice a "financial scam" and former Secretary of the VA, Hershel Gober, has stated, "These schemes seem to target the most desperate of our veterans. No financial expert on the planet would encourage anyone to accept 30 cents today if they could get a dollar tomorrow. He went on to say, "VA lawyers are still studying the fine print in these schemes to determine whether or not they

are legal. Even if they are legal, they're despicable, because they take money away from the people in the direst financial straights.... Doing this to veterans is reprehensible."

The VA Inspector General also stated: "For many unsuspecting veterans, these benefit buyouts could be financially devastating." In one case, a veteran received a lump sum of $73,000 in return for his monthly benefit checks of $2,700 over ten years. That's an annual interest rate of 28.5 percent.

Mr. Chairman, I find this practice wrong and I'm determined to put a stop to it. My legislation would do just that.

The intent of the law that prohibits the assignment of a veteran's benefits is clearly being skirted by companies that offer these instant cash schemes. Our bill expands the definition of assignment of benefits to outlaw these contracts and makes a violation punishable by a stiff fine and up to one year in jail.

The second part of this legislation establishes a five-year education and outreach campaign, conducted by the VA, to provide information to veterans about what legitimate financial services are available to them.

A bipartisan group of fifteen Senators have joined in support of this legislation, including two distinguished members of this Committee, Senator Murray and Senator Craig. The Disabled American Veterans, Paralyzed Veterans of America, Vietnam Veterans of America, AMVETS, Veterans of Foreign Wars, and The American Legion all have endorsed it as well.

I would like to thank the VA General Counsel and the VA's legislative liaison for working with my staff to develop the technical language for this bill. I look forward to having the support of this committee as we move to better protect our veterans from "instant cash" and other financial schemes.

I would like to conclude these remarks about this bill with a comment from one of our country's veterans. ". . . My pension isn't a lottery winning. It's an award from the American people for serving my country, and it's appalling to think there are those out there that would rob you of this honor and steal your future."

The second bill that I have introduced is to rename the Veterans Affairs Regional Office in St. Petersburg, Florida in honor Congressional Medal of Honor winner, Command Sergeant Major Franklin D. Miller, United States Army, Retired.

Frank Miller faithfully served our country as a soldier for thirty years from 1962 until his retirement in 1992. During much of that time, he served in Army Special Forces units, including four tours in the Republic of Vietnam. Frank Miller's combat decorations include the Congressional Medal of Honor, the Silver Star, two Bronze Stars, the Air Medal, and six Purple Hearts. He received the Medal of Honor for his bravery in battle in 1971, when, despite his own severe wounds, he singlehandedly overcame four enemy attacks and safely evacuated the surviving members of his patrol.

Upon Frank Miller's retirement from the Army in 1992, with the U.S. Army's highest enlisted rank of Command Sergeant Major, he continued to serve his country as a benefits counselor for the Department of Veterans' Affairs Regional Office in St. Petersburg, Florida. Former Joint Chiefs of Staff, General Henry H. Shelton, who knew Frank Miller personally, has described him as, "an icon to what service in the armed forces is all about."

Sadly, in July of 2000, Frank Miller passed away in Florida. He is survived by his three children, and his brother, who also is a retired Command Sergeant Major of the Army's Special Forces.

Frank Miller dedicated his life to serving our country. He was a loving father and brother, a true soldier's soldier, and a fellow American whose life impacted many people. Frank Miller's life should be remembered and appropriately commemorated. I hope to help honor his life by introducing legislation to name the Florida Veterans Affairs Regional Office in honor of Command Sergeant Major Franklin D. Miller.

Thank you, Mr. Chairman, for the opportunity to appear before the Committee.

Chairman ROCKEFELLER. Eloquent and discouraging because, when you said there were 1.7 million veterans in Florida, that is about the population of my entire State. [Laughter.]

Senator Wellstone?

Senator WELLSTONE. Thank you.

I will try to be brief, Mr. Chairman, and I want to apologize, too, to our distinguished panelists. I am going to be in and out because of two other things going on at the same time.

We have got before us 1680, which is the Soldiers' and Sailors' Civil Relief Act, and one of the reasons I want to make a brief

statement is to send a signal to the Department of Defense and the administration.

This legislation provides protection to National Guard personnel that are protecting our Nation's airports and other vulnerable public facilities, and what the bill does is provide civil relief to the National Guard personnel that have been mobilized by State Governors at the request of the President in support of an operation during a war or national emergency.

The Soldiers' and Sailors' Relief Act provides essential protections to service members on active duty, but it, unfortunately, only applies to National Guard personnel who are mobilized directly by the President and does not protect those who have been mobilized by Governors at the request of the President. That is the case with many men and women right now that are really protecting our airports and other public facilities.

We are talking about 7,600 National Guard personnel in active duty in what is called title 32 status, and they are performing essential security missions. Let me talk about the Soldiers' and Sailors' Relief Act. This is really heartbreaking what is going on in the country. Even this does not provide the help we should be providing, but what this says is, look, these people, many of whom do not come from a lot of money, they are losing a lot of money every month, and at the very minimum we ought to protect them from exorbitant interest charges, and we ought to make sure they have relief from not being evicted from their homes or apartments, at the very minimum, or having cancellation of their life insurance. That is the protection that we give people, but we do not give these guard members that protection. It is just really almost outrageous what is going on.

I want to insert, for the record, letters of support from The Military Coalition and the Enlisted Association of the National Guard. By the way, The Military Coalition is a consortium of 33 nationally prominent uniformed services and veterans organizations, representing 5.5 million current and former members of the seven uniformed services.

[The information referred to follows:]

EANGUS,
ALEXANDRIA, VA,
April 30, 2002.

Hon. PAUL WELLSTONE,
136 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR WELLSTONE: I would like to thank you on behalf of the members of the Enlisted Association of the National Guard of the United States (EANGUS) for introducing S. 1680, to provide financial protections and civil relief to those National Guard personnel who have been mobilized by state governors as a result of the September 11 terrorist attacks.

National Guard soldiers and airmen called to active duty under Title 32 do not have the protection of the Soldiers and Sailors Civil Relief Act (SSCRA). National Guard and Reserve members called to active duty under Operation Enduring Freedom in Title 10 status do have that protection.

The SSCRA was passed by Congress to provide protection for individuals called to active duty in any of tile military services. The SSCRA suspends certain civil obligations to enable service members to devote full attention to duty, The SSCRA protects the individual and his family from foreclosures, evictions, and installment contracts for the purchase of real or personal property if the service member's ability to make payments is "materially affected" by the military service. The SSCRA entities a person called to active duty to reinstatement of any health insurance that was

in effect on the day before such service commenced, and was terminated during the period of service. It also protects the service member against termination of private life insurance policies during tile term of active service.

I believe that all members of the National Guard performing active duty service for a national emergency or war at the call of the President should be entitled to protection under the SSCRA. Thank you for this legislation and its changes to the Soldiers and Sailors Civil Relief Act that will give National Guard members that protection. If there is anything that we can do to assist you, please feel free to ask.

Respectfully,

MSG MICHAEL P. CLINE (RET.), ARNG,
Executive Director.

THE MILITARY COALITION,
ALEXANDRIA, VA,
December 6, 2001.

Hon. JOHN D. ROCKEFELLER,
Chairman, Veterans Affairs Committee,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Military Coalition, a consortium of 33 nationally prominent uniformed services and veterans organizations, representing more than 5.5 million current and former members of the seven uniformed services, plus their families and survivors, would like to bring to your attention a serious inequity for National Guard members who have been called to active duty for Operation Noble Eagle in Title 32 status.

National Guard soldiers and airmen called to active duty under Title 32 do not have the protection of the Soldiers and Sailors Civil Relief Act (SSCRA). National Guard and Reserve members called to active duty under Operation Enduring Freedom in Title 10 status do have that protection.

The SSCRA was passed by Congress to provide protection for individuals called to active duty in any of the military services. The SSCRA suspends certain civil obligations to enable service members to devote full attention to duty. The SSCRA protects the individual and his family from foreclosures, evictions, and installment contracts for the purchase of real or personal property if the service member's ability to make payments is "materially affected" by the military service. The SSCRA entitles a person called to active duty to reinstatement of any health insurance that was in effect on the day before such service commenced, and was terminated during the period of service. It also protects the service member against termination of private life insurance policies during the term of active service.

Military Coalition believes that all members of the National Guard performing active duty service for a national emergency or war at the call of the President should be entitled to protection under the SSCRA. Please support S. 1680 and its changes to the Soldiers and Sailors Civil Relief Act that will give National Guard members that protection.

Sincerely,

THE MILITARY COALITION.
(Signatures Enclosed)

Air Force Assn.
Air Force Sergeants Assn.
Army Aviation Assn. of America.
Assn. of Military Surgeons of the United States.
Assn. of the US Army.
Commissioned Officers Assn. of the U.S. Public Health Service, Inc.
CWO, & WO Assn., US Coast Guard.
Enlisted Association of the National Guard of the US.
Fleet Reserve Assn.
Gold Star Wives of America, Inc.
Veterans' Widows International Network, Inc.
Marine Corps League.
Marine Corps Reserve Officers Assn.
Military Order of the Purple Heart.
National Order of Battlefield Commissions.
Naval Enlisted Reserve Assn.
Naval Reserve Assn.
Nat'l Military Family Assn.
Non Commissioned Officers Assn of the United States of America.
Reserve Officers Assn.
National Guard Assn. of the US.
The Military Chaplains Assn. of the USA.
The Retired Enlisted Assn.
The Retired Officers Assn.
United Armed Forces Assn.
USCG Chief Petty Officers Assn.
US Army Warrant Officers Assn.
Veterans of Foreign Wars of the US.

Senator WELLSTONE. Let me just kind of point it out this way, Mr. Chairman and others. You have title 10 status and title 32 status. It is impossible to explain why one Guard member in title 32 status, called up by the Governor at the request of the President, on guard at our airports, can lose his or her home, be foreclosed on, while the same Guard members who were doing border security that have been called up directly by the President are provided that protection. I mean, it makes no sense whatsoever.

The committee, and I thank you for this, has requested from the DOD a letter of explanation for their opposition. We passed this, and put it on the Defense Department appropriations bill last session, and then it got stripped out at conference, and the DOD opposed it. I would like to know why. That is why I am speaking today at this committee taking, I will just take a couple of more minutes.

They have said, well, the State should provide the protection. We have got a U.S. Supreme Court, *Marquette National Bank of Minneapolis* v. *First Omaha Service Corporation* saying that one State cannot regulate the interest rates of a national bank located in another State. So a State cannot do it. It has to be Federal protection. One of the primary benefits of this is to keep a 6-percent cap on interest rates. So States cannot enforce such laws.

Let me just simply conclude this way. We are going to be calling on our Guard members to do a lot. They are going to be doing more border security, and it is just—again, if I had my way, and maybe this is just a very, this piece of legislation, frankly, may be too incremental, I do not know, maybe other Senators and other Reps have had the same experience, I do not know if you have, but if you talk to people out there at the airports, these are people who never had much money, and what they are losing every month is unbelievable. I mean, and this is going on and on, and we are going

to be asking them to do border security and other things. At the very minimum, for God's sake, we ought to give them the same protection.

They are there. It is national emergency. The Governor has called them up at the request of the President of the United States of America. Why in the world do we not give them the same protection?

So, today, as a member of this committee, I hope we will move this legislation expeditiously, and I would like to smoke the Department of Defense out. I would like to know what is the possible justification for their opposition? Because so far the only thing I have heard, does not hold up, which is, well, States should do it. States cannot. States do not have the authority.

So I hope we can move this legislation, and frankly I hope we can pass this. I wish we could figure out a way of—I know the Guard members will say, hey, we are serving our country, but I wish we could figure out some way of providing some kind of income assistance or something that helps these families because they are really hurting.

Thank you.

[The prepared statement of Senator Wellstone follows:]

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

I am glad to be here this morning to talk about S. 1680, a bill to amend the Soldiers' and Sailors' Civil Relief Act (SSCRA) to expand the protections of that Act to National Guard personnel protecting our nation's airports and other vulnerable public facilities. Specifically, the bill will provide civil relief to National Guard personnel mobilized by state governors at the request of the President, in support of an operation during a war or national emergency.

The SSCRA provides essential protections to service-members on active duty. Unfortunately, it only applies to National Guard personnel mobilized directly by the President of the United States, and does not protect those mobilized by state governors at the request of the President—as is the case with many of the men and women protecting our nations airports and other public facilities.

Right now nationwide there are about 7,600 National Guard personnel in active duty title 32-status conducting these essential security missions. About 5,800 of them are at 405 airports throughout the nation. In Minnesota, we have 31 MN National Guard soldiers providing security at the Minneapolis-St. Paul airport. The President has stated he is determined to remove the National Guard from airport security duty and that de-mobilization is underway. Unfortunately, in the meantime, the men and women of the National Guard doing this important work are not receiving the financial protections they rightly deserve.

Colleagues, the SSCRA is an important Act that provides help to people who have taken on financial burdens without knowing they would be called up to serve in the military. I won't go into too much detail of the protections offered by it though I would like to mention a few. The SSCRA provides substantial debt relief, capping interest rates at 6% for any debts a service-member incurred before he or she went on active duty. This is very important since many of these men and women have mortgages on their homes and student loans, but have left higher-paying jobs to provide security for their fellow citizens. Capping interest on their debt is important to ensuring their and their loved ones financial security. The SSCRA also protects service-members on active federal duty against court judgments, evictions and cancellation of their life insurance.

S. 1680 passed the Senate, with 12 co-sponsors, as an amendment to the 2002 Department of Defense Appropriations Bill. Unfortunately, it was stripped out of the conference report to that bill. Today the bill has the support of the Military Coalition—a consortium of 33 nationally prominent uniformed services and veterans organizations, representing more than 5.5 million current and former members of the seven uniformed services, plus their families and survivors—as well as the Minnesota National Guard. I would like to insert in the Committee record letters of support for the bill from the Military Coalition and the Enlisted Association of the National Guard.

I understand the Committee has requested DOD's formal written views on the bill. I look forward to hearing those views. To date, DOD has opposed S. 1680 due to command structure differences between service-members called up by a state and those under the command of the Federal government, and because DOD believes states, and not the federal government, should provide "Soldiers and Sailors-like" protections. It is clear to me and all those that I have spoken with that DOD's reasoning for this opposition is flawed.

The federal government pays the salaries of National Guard men and women in title 32 status and title 32 missions are always federal missions, regardless of the command and control situation. National Guard personnel in title 32 status deserve the same protections of those in title 10 status because, honestly, they are doing a very similar type of duty. It is impossible to articulate why one Guardsman who is in title 32 status on airport security duty can lose his home to foreclosure while one in title 10 status on border security duty can not. The fact that the Governor issued the call-up orders rather than the President himself is irrelevant.

DOD has also suggested that State's should provide "Soldiers' and Sailors-like" protections but that solution that will not work for many National Guard personnel. The U.S. Supreme Court made clear in *Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp. Et. Al.* (439 U.S. 299) that one state can not regulate the interest rate of a national bank located in another state. One of the primary benefits of the SSCRA is the 6% cap on interest rates. A state simply can not enforce such a state law.

We are in a very unique situation. We must be aware that National Guard units may be asked to do more in the coming months and years. S. 1680 will ensure we provide our citizen-soldiers the civil relief they rightly deserve. Addressing this now will ease the burden placed upon these patriots and their families now and in the future. Colleagues, these young people are not asking for much. Extending the protections of the SSCRA is an important way to say that we value their service and that we will not forget them or their families commitment to the United States. I urge my colleagues to support it.

Chairman ROCKEFELLER. Thank you, Senator Wellstone.

I want to move on now to our panel. We are going to hear from Tim McClain, who is the VA General Counsel, who is accompanied by—is my protocol correct?——

Mr. MCCLAIN. Yes, sir.

Chairman ROCKEFELLER. —Dr. Fran Murphy, Deputy Under Secretary of Health; Bob Epley, VBA's Associate Deputy Under Secretary for Policy and Program Management; Jack Thompson, the Deputy General Counsel; Mick Kicklighter, the Assistant Secretary for Policy and Planning and currently Acting Director of the new Office of Operations, Security and Preparedness; and Vince Barile, who is Deputy Under Secretary for Management from the National Cemetery Administration. I thank you all for coming.

Mr. McClain is right in front of me. I put to you the impossible task of trying to do this in 5 minutes.

STATEMENT OF HON. TIM McCLAIN, GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY FRANCES M. MURPHY, M.D., DEPUTY UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION; ROBERT EPLEY, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION; JOHN [JACK] THOMPSON, DEPUTY GENERAL COUNSEL; HON. CLAUDE [MICK] KICKLIGHTER, ASSISTANT SECRETARY FOR POLICY AND PLANNING/ACTING DIRECTOR, OFFICE OF OPERATIONS, SECURITY AND PREPAREDNESS; AND VINCE BARILE, DEPUTY UNDER SECRETARY FOR MANAGEMENT, NATIONAL CEMETERY ADMINISTRATION

Mr. MCCLAIN. I will endeavor to do it in 5 minutes.

Mr. Chairman, thank you very much for inviting the Department to give you its views and comments on the many, many bills that are pending before this committee.

I, first of all, request that my full statement be inserted in the record at this point.

Chairman ROCKEFELLER. Absolutely.

Mr. MCCLAIN. Getting right to the point, the VA is pleased to lend its unqualified support for the following measures on today's agenda: S. 1113 and S. 2025, which would enhance pensions paid to Medal of Honor recipients; S. 1576, which would extend by 10 years our special treatment authority for Persian Gulf War veterans; S. 2043, extending by 5 years, the institutional and non-institutional extended care authorities from the Millennium Act; and S. 2074, the Compensation COLA bill.

Mr. Chairman, we also very much appreciate your introducing three bills at our request and inviting testimony from the different witnesses today, including S. 1905 to authorize care for newborns of enrolled women veterans, dental care for all POWs, and for other provisions; S. 2229, which is the Departments' version of the Compensation COLA bill, but also includes a provision to revise the current requirement for maintaining levels of VA institutional extended care provided to veterans in accord with 1998 levels. We believe this proposal is essential if veterans are to retain options for receiving nursing home care in the manner and locale of their choice; and S. 2186, legislation in support of a new VA Assistant Secretary for Office of Operations, Security and Preparedness.

My prepared statement details our support for all of these bills, and it explains our support, also, for the Medical Emergency Preparedness Centers in S. 2132, and the State Approving Agency funding increases in S. 2231.

Regarding some of the other bills under consideration today, we do not believe there is adequate justification for the following bills, and the VA or the administration does not support their enactment.

First, is the beneficiary travel amendments in S. 984 and the pharmacy copayment amendments in S. 1408 because of their adverse impact on the resources for the provision of health care in the Department; the Montgomery GI bill amendments in S. 1517; the anti-assignment provisions of S. 2003; the specialized mental health services provision of S. 2044, which would require VA to fund these services outside our VERA equitable allocation model; the provisions of 2079 that would subject VA's rating schedule to vexatious litigation and fundamentally change the role of the Court of Appeals for Veterans Claims; revisions of the law governing non-profit research corporations, as proposed in S. 2132; and the retirement annuity amendment in S. 2227.

Mr. Chairman, as to the other provisions and bills under discussion today, as our formal written statement provides, VA either does not object or does not yet have VA or administration positions on the bills. We will be providing views on those bills in writing in the very near future.

That completes my brief oral statement, and myself and my colleagues accompanying me would be glad to answer any questions that you or the panel might have.

[The prepared statement of Mr. McClain follows:]

PREPARED STATEMENT OF TIM MCCLAIN, GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on a number of legislative items of interest to veterans.

S. 984

This bill would increase the beneficiary travel mileage rates to reimbursement rates (applicable to privately owned vehicles) established by the General Services Administration (GSA). It would also include a new group of veterans among those entitled to beneficiary travel benefits under 38 U.S.C. § 111, specifically veterans whose travel is in connection with treatment for a non-service connected disability at a non-VA facility, if the treatment is recommended by VA medical personnel at a facility that is not able to provide the recommended treatment.

VA does not support S. 984. While VA's reimbursement rates are less than those established by GSA, any increase would decrease funds available for direct medical care. It is estimated that an increase in beneficiary mileage reimbursement rates to GSA's level of 36.5 cents would cost approximately $97 million that would have to come from medical care funding. Even a modest increase of 5 cents per mile would cost approximately $20 million. We cannot support diminishing VA's capacity to provide direct patient care to provide an added benefit to the very limited groups of veterans eligible for travel reimbursement benefits.

S. 1113 AND S. 2025

Both of these bills would enhance the special pension paid by VA to those who have been awarded the Congressional Medal of Honor, by increasing the monthly benefit to $1,000 (it is currently $600) and indexing the rate to annual increases in the cost of living. S. 2025 would, in addition, provide that the special-pension eligibility shall commence on the first day of the month beginning after the date of the act for which an individual is awarded the Medal of Honor. Currently, the period of eligibility does not begin until after the military service concerned certifies to VA that the Medal of Honor has been awarded and the recipient applies for the pension. Under S. 2025, all individuals in receipt of the special pension on the date of enactment would be entitled to lump-sum payments representing the additional amounts of pension that would have been payable had they been eligible from the first of the month following the acts for which they received the medals. We note that as of March 2002, there were only 143 Medal of Honor recipients drawing the special pension.

Last October we notified the Committee that we favor an increase of the monthly payments to $1,000 and the indexing of the rate, as provided in S. 1113. We also support the earlier effective dates for the awards called for in S. 2025. We are aware of situations in which there have been lengthy delays—through no fault of the recipients—in the awarding of Medals of Honor. The proposed effective-date amendment would be more equitable than current law, which bases periods of eligibility on when the Government acts to award Medals of Honor. We believe, however, there may be an internal inconsistency in the language of sections 2(a) and 2(c) of S. 2025 concerning the calculation of retroactive payments which we do not believe was intended. We would be pleased to work with the Committee staff to revise the bill to correct this technical problem. We would defer to the views of the Department of Justice regarding the merits of the criminal-law amendments in S. 2025.

These proposals would increase direct spending; therefore, they are subject to the pay-as-you-go (PAYGO) provisions of the Omnibus Budget Reconciliation Act of 1990. We estimate the PAYGO costs associated with enactment of the rate increases in either S. 1113 or S. 2025 to be $670,000 for FY 2003, $3.2 million for the five-year period FY 2003 through FY 2007, and $6.1 million for the 10-year period FY 2003 through FY 2012. We have not yet estimated the costs of the effective-date amendment in S. 2025.

S. 1408

This bill would increase the income threshold used to define the group of low-income veterans who are exempted from paying the outpatient pharmacy co-payment. The exempted group would be expanded to include veterans who, for purposes of receiving VA health care, are deemed unable to defray necessary expenses of care, i.e., those with incomes below VA's "means-test" threshold. A provision of the bill

would also prohibit the Secretary from increasing the pharmacy co-payment until VA begins collecting co-payments for outpatient care.

Currently, the low-income exemption applies only to those veterans whose incomes do not exceed the maximum annual rate of pension payable under 38 U.S.C. § 1521 were they eligible for such pension. This is a much smaller group composed of very low-income veterans. Although VA appreciates the desire to standardize the definition of "low-income" veteran for purposes of both health care eligibility and the pharmacy co-payment exemption, VA cannot support S.1408. The proposal would significantly reduce much-needed revenue upon which the Department relies to continue providing services. We also recommend deletion of the provision deferring increases in the amount of the pharmacy co-payment. VA is already implementing new regulations pertaining to both the pharmacy co-payment and the outpatient co-payment.

We estimate the PAYGO costs of S. 1408 to be $300 million dollars annually.

S. 1517

S. 1517 would enhance certain aspects of the Montgomery GI Bill (MGIB). Specifically, the bill would amend the chapter 30 MGIB-Active Duty program by eliminating both the $1200 pay reduction currently required to participate in the chapter 30 MGIB program and the election required of those who choose not to participate. The Administration does not support this proposal.

S. 1517 would also add a new category of individuals under the chapter 30 program who would be entitled to transfer their entire entitlement or a portion of it to one or more of their dependents. Under this provision, individuals with not less than 15 years of active duty service would become eligible to transfer MGIB education benefits. While this provision would have significant PAYGO costs, our PAYGO estimate is still under development. Since this proposal does not support the readjustment goals of the MGIB, the Administration does not concur in its enactment.

S. 1517 also would extend the time limitation for using an individual's chapter 30 MGIB entitlement from 10 years after the date of discharge or release from active duty to 20 years. In like manner, it would provide for a 20-year delimiting period for members of the MGIB-Selected Reserve as well. The Administration does not support these provisions. In our view, extending the 10-year period is not consistent with the stated purposes of the MGIB. We believe that 10 years is sufficient time for most individuals to make the readjustment from military to civilian life.

Finally, S. 1517 would provide for increased MGIB education benefits for those members of the Selected Reserve who are called to active duty for more than one year for a contingency operation. The Administration also does not support this proposal.

S. 1561

This bill would authorize $2 million for fiscal year 2002 and such sums as may be needed for each subsequent fiscal year for VA to continue its efforts in responding to, and training of VA and other health-care professionals for, the medical consequences of bio-terrorism.

We support increasing VA's efforts in the area of emergency medical preparedness. However, we believe that the objectives of this legislation should be addressed in the context of other measures being considered that address VA's role in bio-terrorism preparedness. VA's current funding in these areas is appropriated in the Department of Health and Human Services budget for reimbursement to VA, in order to ensure close coordination. The Homeland Security Council is currently evaluating the distribution of resources and effort of each agency in the context of a national strategy.

S. 1576

S. 1576 would extend through December 31, 2011, VA's special authority to treat Gulf War veterans for any disability, notwithstanding there is insufficient medical evidence to conclude that such disability may be associated with such service. That authority will expire after December 31, 2002. VA supports this proposal.

S. 1680

S. 1680 would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to treat certain National Guard duty as military service under that Act. This legislation would enable National Guard members who are called or ordered to service by their governor in support of Operation Enduring Freedom, or at the request of the

President, to qualify for the protections afforded by the SSCRA. Examples of these protections are the six-percent interest rate limitation on pre-existing consumer debt, and stays of judicial proceedings in civil matters.

The only notable impact on VA would be in our loan guaranty programs. In these areas, VA itself would have to abide by the SSCRA's provisions. The impact of the proposed amendment in this regard would be minimal and the PAYGO cost to VA would be insignificant. Because the protections provided under the SSCRA are afforded to individuals serving in military service, the Department of Defense (DoD), not VA, is the Federal agency with the primary interest in this Act. Therefore we defer to DoD on this bill. We understand that DoD will provide its views on S. 1680 to the Committee shortly.

S. 1905

Mr. Chairman, thank you for introducing S. 1905 at our request. It contains a variety of needed enhancements to veterans' programs and the ability of the Department to administer them. Among its most significant provisions, it would:

- Confer new authority for VA to provide medical care for newborn children of enrolled women veterans;
- Authorize us to provide dental care to more former prisoners of war; and
- Eliminate certain VA-specific restrictions on numbers of non-career SES members and on who may serve as Deputy Assistant Secretaries.

I strongly urge its favorable consideration.

S. 2003

S. 2003 would amend VA's anti-assignment statute, 38 U.S.C. § 5301, by adding language to prohibit agreements, and collateral security arrangements, between persons receiving monetary VA benefits and third parties. Third parties use these agreements to acquire rights to receive monetary benefits paid to VA beneficiaries.

Let me first say that, because 38 U.S.C. § 5301 generally bars assignment of VA benefits, VA regional offices have not, and do not, honor such agreements. Nevertheless, once funds are paid to a beneficiary, except where the veteran has been found mentally incompetent, VA lacks the ability to oversee how those funds are used. While we would certainly counsel veterans, their dependents and survivors to very carefully consider the full ramifications of assigning their benefits, we believe they should be free to decide how best to manage their own personal finances. We do not, therefore, support enactment of S. 2003.

S. 2043

S. 2043 would extend by five years (through December 31, 2008) VA's authority to provide non-institutional extended care services as part of the medical benefits package furnished to veterans. The bill would also extend through December 31, 2008, mandatory eligibility for nursing home care for veterans with a service-connected disability rated 70% or greater. Finally, S. 2043 would extend by five years the date by which the Secretary must report to Congress on the operation of its long-term care programs established under the Millennium Act. VA supports S. 2043 and the continuation of the Millennium Act non-institutional long-term care provisions.

S. 2044

S. 2044 would amend section 116 of the Millennium Act to direct that we increase funding for specialized mental health services for veterans. The measure directs that we expend $25 million for these programs, but it is not clear whether it would require $25 million for each of three successive years, or over a three-year period. The additional $25 million must also be over and above the baseline amount now being expended for these programs. However, it is unclear if we must expend an additional $25 million over the baseline each year for three successive years, or only over a three-year period. Finally, the measure directs that we consider these funds to be special-purpose funds that we must allocate outside the VERA allocation system.

Although VA appreciates the need to ensure adequate funding for these highly valuable and essential health-care programs, we strongly oppose this bill. We do not believe any individual health service should be treated differently from other essential treatment programs for allocation of appropriated resources. We also believe it is inappropriate to direct that we allocate funds for programs like this outside of the VERA system.

S. 2060

This legislation would designate the building housing VA's Regional Office in St. Petersburg, Florida as the "Franklin D. Miller Department of Veterans Affairs Regional Office Building." It would also require the Secretary to provide for an appropriate ceremony for, and commemoration of, the new designation on the first Memorial Day that follows enactment of the bill. Finally, the bill would require the Secretary to permanently display a copy of Mr. Miller's Medal of Honor citation in the building's lobby. We respectfully defer to the views of Congress on the naming of Federal property.

S. 2073

This bill would provide retroactive entitlement to Medal of Honor special pension to Mr. Ed W. Freeman. As indicated above, VA supports enactment of S. 2025, which would "make whole" special pensioners for whom the awarding of the Medal of Honor was delayed. We generally do not support private relief bills, so we would prefer that this issue be addressed through enactment of S. 2025. In general, VA opposes private bills that provide relief for veterans and their survivors beyond that available through existing law. We believe that individuals should not be singled out for treatment not afforded similarly situated persons.

S. 2074 AND S. 2229

Both S. 2074 and S. 2229 would increase the rates of compensation for service-disabled veterans and for dependency and indemnity compensation paid to survivors of veterans whose deaths were service-related, effective December 1, 2002. As provided in the President's FY 2003 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 1.8 percent. The proposed COLA is necessary to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this COLA would cost $279 million during FY 2003, $1.66 billion over the period FY 2003–2007 and $3.45 billion over the period FY 2003–2012, which is included in the President's Budget. Therefore, the PAYGO cost is zero.

S. 2229, which you were kind enough to introduce at our request, would also revise the statutory requirement that VA continue to provide extended-care services at 1998 levels. As you know, current law requires VA to maintain staffing and level of extended care services provided in VA facilities at the levels provided during FY 1998. We propose to amend the law to require that VA maintain the overall level of extended care it provided during FY 1998 (i.e., the aggregate of care provided in VA facilities, care VA contracts for in community nursing homes, and care VA subsidizes in State homes). If VA were required to meet the current mandate regarding care in just VA facilities, it would need to divert to that program an estimated $161.2 million by the end of FY 2004 from other health-care purposes, including community nursing-home care and State nursing-home construction. This would greatly disserve veterans, who benefit from both choice and access to care closer to loved ones.

S. 2079

S. 2079 would effect four changes in current law. First, it would permit judicial review of amendments to VA's schedule of ratings for disabilities. Second, it would change the standard of review applied by the United States Court of Appeals for Veterans Claims (CAVC) in challenges to findings of fact made by VA in adjudicating claims for benefits. Third, it would expand the jurisdiction of the United States Court of Appeals for the Federal Circuit to permit review of CAVC decisions on rules of law not involving the validity or interpretation of a statute or regulation. Fourth, it would authorize the CAVC to award reasonable fees and expenses under the Equal Access to Justice Act to non-attorney practitioners.

Review of Rating Schedule

Section 1 of S. 2079 would permit judicial review of VA's actions in adopting or revising provisions of its Rating Schedule. Such review is currently prohibited by 38 U.S.C. §§ 502 and 7252(b). Under S. 2079, such review could be sought either through a rule-making challenge filed directly with the Federal Circuit or as part of an appeal from a VA decision on a benefit claim, which is presented first to the CAVC and may thereafter be appealed to the Federal Circuit. The bill would permit

direct challenges in the Federal Circuit only with respect to a revision of the Rating Schedule occurring after the date of enactment of this bill. However, the bill would impose no similar limitation on challenges brought in connection with an appeal from a VA benefit decision. Accordingly, all changes to VA's Rating Schedule made at any time in the past would apparently be subject to review in such appeals.

VA does not support this change. In the Veterans' Judicial Review Act, Congress prohibited judicial review of the Rating Schedule because of the disruptive effect such review may have on VA claims processing. This change unnecessarily revisits the issues that were resolved in the compromises that led to enactment of the VJRA. Those compromises were reached in recognition of the fact that empowering courts to review VA's rating schedule will result in additional time-consuming litigation concerning complex medical and vocational matters on which courts have no particular expertise or experience.

Pursuant to 38 U.S.C. § 1155, the disability ratings assigned in the Rating Schedule are based upon the "average impairments of earning capacity resulting from such injuries in civil occupations" and are to be revised by VA "in accordance with experience." As the statute contemplates, the provisions of VA's Rating Schedule are based on VA's judgment and accumulated experience in evaluating the medical, vocational, and economic factors relating to the effect of specific disabilities on earning capacity. Disputes concerning the content of the Rating Schedule would not involve the type of legal issues or case-specific fact issues that appellate courts are ordinarily called upon to decide. Rather, they would involve challenges to VA's informed judgment concerning the average economic effects of specific medical conditions.

Appellate courts are ill-equipped to assess the many medical, social, economic, and experiential factors that inform VA's judgment on these issues, and the CAVC and Federal Circuit would be particularly hampered in this endeavor by the lack of any procedures for developing an evidentiary record for such review. Even if an appellate court could acquire sufficient information to permit judicial review of these discretionary judgments, the process would be extremely time-consuming and burdensome on VA and the courts alike.

Apart from the disruptive effects that would ensue if a reviewing court modifies or invalidates portions of the Rating Schedule, judicial review may limit VA's flexibility to adopt beneficial rating provisions based primarily on its experience and expertise. Although 38 U.S.C. § 1155 indicates that VA's experience will be the primary guide in adopting changes to the Rating Schedule, judicial review would necessarily result in increased formalization and a greater need for specific medical and vocational evidence to support each rating. Rather than benefiting veterans, in our view, the rigidity that would likely follow from judicial review may adversely affect the historically liberal nature of VA's Rating Schedule.

For these reasons, determinations concerning the average impairment of earning capacity due to specific conditions should continue to be committed to VA's informed discretion. The costs that may be associated with this provision cannot be predicted, but would depend on the number of challenges filed under this provision and the outcome of such challenges.

Standard of Review for Findings of Fact

Section 2 of S. 2079 would change the standard applied by the CAVC in reviewing findings of fact made by the Board of Veterans' Appeals. Currently, the CAVC is authorized to set aside any "clearly erroneous" finding of material fact. S. 2079 would direct the CAVC to set aside any finding of material fact that is "not reasonably supported by a preponderance of the evidence."

The "clearly erroneous" standard is a well-known standard of appellate review. See Fed. R. Civ. P. 52(a). In contrast, the "preponderance" standard is ordinarily used as a standard of proof describing a party's evidentiary burden before a fact-finding body such as the Board of Veterans' Appeals. As the Supreme Court has noted, standards of proof and standards of appellate review serve very different functions and are not interchangeable. *Concrete Pipe and Products of California, Inc.* v. *Construction Laborers Pension Trust for Southern California,* 508 U.S. 602, 622–23 (1993). Standards of proof describe the degree of evidence needed to convince the finder of fact in the first instance. Standards of appellate review, on the other hand, describe the degree of confidence an appellate court must have in the fact finder's decision, and ordinarily accord some deference to the fact finder's decision.

There would be some incongruity in defining the CAVC's standard of review in terms of a standard of proof customarily employed only by initial fact finders. More troubling, however, is the fact that the "preponderance" standard would require the CAVC to decide claims without any deference to VA's findings of fact. Under the "benefit of the doubt" rule in section 5107(b) of title 38, United States Code, any findings of fact adverse to the veteran must be based on a preponderance of evi-

dence. Section 2 of S. 2079 would direct the CAVC to independently decide whether a preponderance of evidence supports each factual finding, allowing no deference to the Board, which holds hearings, takes testimony, and seeks additional evidence as necessary.

This Committee's 1988 report on the Veterans' Judicial Review Act discussed the importance of according deference to the Board's "expertise as an arbiter of the specialized types of factual issues that arise in the context of claims for VA benefits." This approach comports with the ordinary practice of according deference to factual findings made by administrative agencies, in view of the agencies' expertise, familiarity with the types of evidence and evidentiary issues involved, and ability to evaluate the credibility of testimony and other forms of evidence. Under the Administrative Procedure Act, findings of fact by most agencies are reviewed under the deferential "substantial evidence" standard.

Even if the Committee believes that a standard less restrictive than the "clearly erroneous" standard is warranted, it should not take the drastic step of permitting de novo review of VA fact finding, as S. 2079 would. As this Committee noted in its report on the Veterans' Judicial Review Act, there are other intermediate review standards available, such as the "substantial evidence" standard. Permitting de novo review would derogate from the Board's primary expertise in weighing evidence, evaluating the credibility of evidence, and making factual determinations on complex medical issues. It may also be expected to increase the CAVC's responsibilities and caseload. Moreover, it would depart from established practice in American jurisprudence of tiered layers of judicial review and would uniquely deprive VA of the deference routinely accorded to factual findings of virtually all other agencies. The anomaly of a court performing precisely the same function as an agency and wielding the same fact-finding authority is both redundant and inconsistent with the traditional roles of the executive and judicial branches of government.

Finally, I want to make clear that the CAVC's current standard of review does not in any way deprive veterans of the benefit of the doubt accorded by law. Under current law, the CAVC routinely considers whether the Board has applied the "benefit of the doubt" standard, whether the Board has adequately explained the application of that standard to the facts of each case, and whether there is a plausible basis for the Board's conclusions under that standard. This review plainly ensures that the benefit of the doubt is accorded to veterans whenever applicable.

We cannot predict the costs that may be associated with this provision, as they would depend largely upon the outcome of individual cases.

Federal Circuit Review of Issues of Law

Section 3 of S. 2079 would authorize the United States Court of Appeals for the Federal Circuit to review decisions of the CAVC on a rule of law. Currently, the Federal Circuit may review CAVC decisions with respect to the validity or interpretation of a statute or regulation or with respect to a constitutional question. S. 2079 would clarify that the Federal Circuit may decide legal questions that do not involve a statute, regulation, or constitutional provision. Proponents of this provision have suggested that it is needed to permit review of judicially-created legal rules, such as those involving equitable tolling of time limits or the so-called "treating physician" rule adopted by courts in Social Security benefit claims. VA does not agree with that view. We do not believe that purely legal issues are insulated from review by the current statute. Notably, the Federal Circuit has decided challenges concerning judicially-created legal principles under the existing statute, including issues pertaining to equitable tolling and the treating physician rule. *See Bailey* v. *West,* 160 F.3d 1360 (Fed. Cir. 1998) (en banc); White v. *Principi, 243 F.3d 1378 (Fed. Cir. 2001).*

Although we do not believe this provision is necessary, VA has no objection to it. Permitting judicial review of purely legal matters is consistent with the purpose of the Veterans' Judicial Review Act and, we believe, with the Federal Circuit's current practice.

We would, however, recommend one change to this provision. S. 2079 would amend section 7292(c) of title 38, United States Code, to state that the Federal Circuit may review CAVC decisions on a rule of law. This would ensure that the Federal Circuit would retain exclusive jurisdiction over review of decisions of the CAVC. We believe it would also be necessary to make this change in section 7292(a), the provision the Federal Circuit has identified as prescribing its jurisdiction in those cases. See Forshey v. *Principi,* No. 99–7064 (Fed. Cir. Apr. 1, 2002).

There would be no significant costs associated with this provision.

Fees for Non-Attorney Practitioners

Section 4 of S. 2079 would authorize the CAVC to award reasonable fees and expenses for the services of non-attorney practitioners admitted to practice under that court's rules. Specifically, the bill would state that the CAVC's authority to award fees and expenses of attorneys under 28 U.S.C. § 2412(b) shall include the authority to award fees and expenses of non-attorney practitioners "as if such non-attorney practitioners were attorneys admitted to practice before the Court."

As an initial matter, we believe this bill should refer to subsection (d) of section 2412, rather than to subsection (b). The Federal Courts Administration Act of 1992 amended subsection (d) to give the CAVC authority to award reasonable fees and expenses of attorneys under that subsection. We are aware of no cases in which the CAVC has awarded fees and expenses under the separate authority of subsection (b) of section 2412.

VA has no objection to permitting payment of reasonable fees and expenses of non-attorney practitioners. We note that the CAVC currently has authority to award reasonable fees and expenses of non-attorney practitioners who are supervised by an attorney. This legislation would extend that authority to cases involving unsupervised non-attorney practitioners who have been admitted to practice under the CAVC's rules.

VA does not, however, support the language in section 4 providing for awards "as if [the] non-attorney practitioners were attorneys admitted to practice before the Court." This language may require that fees for non-attorney practitioners be commensurate with fees for attorneys. Although we recognize the valuable services provided by non-attorney practitioners before the CAVC, their services ordinarily are not compensated at the same level as services of a licensed attorney. The Equal Access to Justice Act contemplates that fees generally shall correspond to the market rates for the kind and quality of services furnished. Accordingly, the CAVC should retain the authority to pay fees for attorneys and non-attorneys at different rates.

There would be no significant costs associated with this provision.

S. 2132

Section 1 of S. 2132 would require the Secretary to establish four Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). VA employees would staff the proposed Centers, and the Centers would be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

The Centers would have four specific purposes. First, they would carry out research and develop methods in detection, diagnosis, vaccination, protection, and treatment of injuries arising from the use of chemical, biological, radiological agents or incendiary or other explosive weapons or devices. Second, they would provide education, training, and advice on the medical consequences of the use of CBR agents or incendiary or other explosive weapons or devices. Third, the Centers would provide that same education, training, and advice to non-VA health-care professionals. These activities would be accomplished through either the National Disaster Medical System or interagency agreements. Fourth, in the event of a national emergency, they would provide laboratory, epidemiological, medical, or other assistance, as the Secretary considers appropriate, to Federal, State, and local health care agencies and personnel involved in, or responding to, the national emergency.

Each Center would be authorized to solicit and accept contributions of funds and other resources, including grants, to carry out their purposes and activities, subject to the Secretary's approval. Section 1 of this bill would also authorize to be appropriated $20 million for these Centers for each of fiscal years 2003 through 2007. By the bill's terms, such authorization is valid only for funds appropriated separately and solely for purposes of the Centers; otherwise, the authorization is null and void.

Section 1 of S. 2132 is similar to H.R. 3253 on which the Deputy Secretary testified on April 10, 2002, before the House Committee on Veterans' Affairs, Subcommittee on Health. However, it incorporates the recommendations VA suggested in its April testimony concerning H.R. 3253 and adds a number of improvements to the House version of the bill. We are grateful to this Committee for having incorporated our recommendations. We strongly support the goals of section 1 of S. 2132 and prefer it to H.R. 3253. However, the Executive Office of the President, through the Homeland Security Council (HSC), is currently crafting a comprehensive coordinated Federal policy on Homeland Security. VA is actively participating in this HSC effort. It is expected that HSC will deliver this policy to the President this July. The precise roles and responsibilities VA will be assigned in the area of Homeland Security will be reflected in that policy. We expect that we will have much to contribute in this area based on our depth of expertise and infrastructure, as alluded to above.

Because the President's Homeland Security Policy is forthcoming, we would like to work with the Committee to ensure that section 1 of S. 2132 is consistent with the comprehensive Federal plan.

In addition, S. 2132 contains two provisions that would expand the purpose and operations of VA non-profit corporations. VA non-profit corporations function as flexible funding mechanisms that support VA research and education. VA non-profits receive and administer funds from outside sources, e.g., NIH grants and donations made by private sponsors, in support of approved VA research projects and education activities. However, the current statute expressly provides that VA may not transfer appropriated funds to the corporations. Section 2(a) of the bill would amend section 7362 of title 38 to permit the transfer of appropriated dollars from VA to a corporation pursuant to a contract or other agreement, including an agreement for actual research. In addition, section 2(b) of the bill would amend VA's sharing authority to treat VA non-profits like affiliated institutions for the purpose of sharing health-care resources related to research, education and training. These changes would broadly enable the corporations to sell services to the Department. The bill also provides that these arrangements would be outside the scope of Federal procurement law and, therefore, would not be subject to full and open competition.

VA objects to these proposals on the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is analogous to that created in a trust. Under current law the corporations exist as a flexible funding mechanism solely to support approved VA research and education. The amendments in section 2 of the bill would make the relationship between Department health-care facilities and VA non-profits more like that with outside contractors or university affiliates; more of an arms-length negotiation rather than one of incontrovertible fiduciary support. This change would also shift the emphasis of VA non-profits away from the primary focus of providing flexible funding support for VA research, education and training to conducting and selling these services to VA. This shift would present a troubling risk of ceding Department control of VA approved research or education to the non-profits.

Section 3 of the bill would amend the title 38 authorities related to VA non-profits by adding a new section 7364A to specifically state that corporation employees assigned to work on approved VA research or education and training shall be considered employees for purposes of Federal tort claim and medical malpractice coverage. VA strongly favors this provision. We note, however, that the phrase, "carried out with Department funds" in the proposed section 7364A(b)(2) might be interpreted to limit this coverage. Much of VA-approved research, or education and training is supported by external funds.

S. 2186

Mr. Chairman, thank you for introducing S. 2186 at our request. This legislation would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement and a new VA office of Operations Security and Preparedness. We believe this new office is essential if we are to meet our responsibilities of protecting veterans, employees, and visitors to our facilities.

S. 2187

S. 2187 would permit VA, on its own initiative, to care for those affected by a disaster or emergency and those responding to the emergency. The disaster or emergency must be either declared by the President or involve activation of the National Defense Medical System. The bill would also require other Federal agencies to reimburse VA for care provided to their officers, employees, and active duty members at rates agreed upon by the agencies. VA would not be required to charge for care provided to other individuals. Finally, the bill would allow VA to provide care in response to disasters and emergency situations before caring for all other beneficiaries except service-connected veterans and active duty military members referred during war or national emergency or who are responding or involved in a disaster or emergency.

We are very interested in this measure, but we need to work with both the committee and other Federal departments and agencies to fully understand the implications of the bill. We anticipate providing further views on the measure at a later time. We would note, however, that the bill also proposes to amend 38 U.S.C. § 1711(b). That provision is now codified at 38 U.S.C. § 1784. Finally, the bill would conflict with an administrative provision that appears in VA's annual appropriation act that requires reimbursement of costs except in specified situations. For the pro-

vision to be effective that provision of the appropriations act will also need amendment.

S. 2227

S. 2227 would clarify the effective date of changes to the method of computing retirement annuities for certain VA health-care personnel. Last January the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (P.L. 107–135) became law. That bill changed the way part-time service performed before April 7, 1986, by certain VA health-care personnel is credited for annuity purposes. VA had recruitment and retention problems based upon the prior methodology of the annuity computation for VA nurses. These difficulties were addressed by the enactment of section 132 of P.L. 107–135. S. 2227 would extend the benefits of section 132 of P.L. 107–135 to individuals who retired before the law's enactment. The Administration opposes legislation that modifies the retirement-benefit computations for employees who are already retired.

S. 2228

This bill would provide that the Secretary may establish not more than 15 Centers for Mental Illness Research, Education, and Clinical Activities under38 U.S.C. § 7320. VA has no objection to this provision.

S. 2230

This legislation would revive VA's authority, contained in section 3707 of title 38, to guarantee adjustable rate mortgage loans (ARMs). The bill would also amend this section to authorize VA to guarantee "hybrid" ARMs.

In 1992 the Congress authorized a three-year test program for VA to guarantee ARMs. That authority had a sunset date of September 30, 1995. Due to concerns about the cost of that program, the Congress let the ARM authority lapse.

The interest rate on ARMs authorized by the 1992 statute, which would be reauthorized by the bill, is adjusted annually, based on a national interest-rate index approved by VA. Each annual increase or decrease is limited to one percentage point. In no event, however, may the interest rate be increased to more than five percentage points above the initial contract interest rate.

The interest rate on hybrid ARMs, which would also be authorized by S. 2230, is fixed for an initial period of not less than three years. Thereafter, the rate would increase or decrease annually by up to one percentage point. The maximum lifetime increase of five percentage points would also apply to hybrid ARMs.

The Administration does not yet have a formal position on S. 2230. The availability of ARMs would expand veterans' ability to qualify for home loans, as some veterans could qualify for the lower initial payments on an ARM who could not qualify for the payments on fixed rate loans for the same dollar amount. The availability of hybrid ARMs would give veterans the additional option of having a fixed monthly payment for a certain number of years before payment adjustment would be a possibility. While veterans using their earned housing loan benefits should perhaps have the same options as borrowers using FHA and conventional loans, they already differ from the general public in that no downpayment is required. Adding a low upfront payment with the potential to escalate in the future to those veterans who do not qualify for fixed rate loans may lead to higher defaults and costs of the system. We need more time to analyze this bill and its implications.

VA estimates that enactment of this bill would have a PAYGO cost of $21 million for the first year, and a 10-year cost of $266 million.

S. 2231

S. 2231 would increase educational assistance benefits under VA's Survivors' and Dependents' Educational Assistance program (chapter 35), limit the number of months for those benefits, and increase funding to State Approving Agencies (SAAs). Specifically, it would raise the chapter 35 educational assistance allowance to $900 per month for a full-time course for Fiscal Year (FY) 2003 and to $985 for months after FY 2003. It would also raise the amounts payable for Special Restorative Training to $900 for FY 2003 and to $985 for the months thereafter. The proposed legislation would also decrease the entitlement available to chapter 35 recipients from the current 45 months to 36 months, in the case of those who first file an educational assistance claim under chapter 35 after the date of enactment. Given the relatively short time to consider these important issues regarding chapter 35, we would like to provide you our views at a later date, after we have had sufficient time to consider the matter.

The final provision of S. 2231 would increase the annual limit on funds available to compensate SAAs for work undertaken on behalf of VA, including approving educational institutions and programs for which veterans and other entitled participants receive VA-administered education benefits. On April 11, 2002, the Under Secretary for Benefits testified before the House Veterans' Affairs Subcommittee on Benefits in favor of H.R. 3731, a bill similar to this one. We, likewise, favor the increase to $18,000,000 contained in S. 1517. However, H.R. 3731 additionally would provide increases in SAA funding of 3 percent for FYs 2004 and 2005, with funding for 2006 and each succeeding fiscal year remaining fixed at the FY 2005 level.

Because of the cost-of-living pay increases mandated by State law, salaries for State employees have gone up since the last SAA funding increase in 1994. Additionally, over the last two years, the SAAs have been called upon to perform new and time-consuming duties as part of their mission. For example, Public Law 106–419, enacted on November 1, 2000, initiated the licensing and certification test payment program and allowed VA to delegate approval responsibility to SAAs even though it was not covered in their contracts.

We prefer the House version of this provision because it would increase SAA funding for the outyears.

OTHER BILLS

Mr. Chairman, we do not yet have positions on three other bills on today's agenda:

- S. 2205, involving compensation for service-connected mastectomies and making permanent VA's authority to provide counseling and treatment for sexual trauma;
- S. 2209, which would establish a new insurance program for service-disabled veterans; and,
- S. 2237, involving enhanced compensation for veterans with hearing loss.

We will be presenting our views and estimates on these in writing to the Committee at a later time. It is worth noting, however, that all the bills on today's agenda together would have costs exceeding $2 billion over five years. VA continues to believe that it is important to use the President's Budget as a guide on how to proceed.

Mr. Chairman that concludes my prepared testimony. I will be pleased to respond to any questions you or the members of the committee may have.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO CLAUDE M. KICKLIGHTER, ASSISTANT SECRETARY FOR POLICY AND PLANNING/ACTING DIRECTOR, OPERATIONS, SECURITY AND PREPAREDNESS

Question 1. While this funding is minimal in comparison to the funding for the Department of Health and Human Services and FEMA for other bioterrorism preparedness and response activities, what resources would this funding provide the VA disaster-training program? Would it expand the number of training sessions, the number of participants, and the number of community partners?

Answer. We support increasing VA's efforts in the area of emergency medical preparedness. However, we believe that the objectives of this legislation should be addressed in the context of other measures being considered that address VA's role in bio-terrorism preparedness. VA's current funding in these areas is appropriated in the Department of Health and Human Services budget for reimbursement to VA, in order to ensure close coordination.

Under this funding VA is developing an emergency mass-casualty decontamination program at our medical centers. Our medical centers are a unique national asset and, since they are located across the country, are in an excellent position to respond in the event of a weapons of mass destruction (WMD) incident anywhere in the United States. We are asking every medical center to implement a mass-casualty decontamination plan to prepare for a possible WMD incident in their community. They will consult and partner with their community's emergency planners to ensure development of a consistent program that meets community needs. A major part of this initiative is training for those VA health care workers who will be called upon to operate these decontamination facilities. We have already developed some excellent hospital decontamination programs within some of our Veterans Integrated Service Networks. Many of them have been nationally recognized by FEMA, and were the basis for such special decontamination programs as implemented by VA for the Winter Olympics in Salt Lake City.

Question 2. What is the reason behind this lack of recognition? Is it based on a lack of awareness or interest? What have you and the VA leadership done to address this issue with HHS, FEMA, or the Office of Homeland Security?

Answer. The Homeland Security Council is currently evaluating the distribution of resources and effort of each agency in the context of a national strategy. In order to assist in this evaluation, VA has met with the Deputy of the Office of Homeland Security and his senior staff members; Deputy Secretary, Health and Human Services (HHS), Director, Office of Public Health Preparedness, HHS, and key staff; Special Assistant, Office of Homeland Security, Department of Defense; and Director, Office of National Preparedness, Federal Emergency Management Agency. These meetings have generated improved support and interest. Presently, we are working to schedule monthly meetings with these Federal partners to further enhance our collaborative efforts and response to Homeland Security initiatives. In addition, our representation on the following Homeland Security Committees and working groups is helping to increase the awareness of VA's capabilities during times of crisis:

- National Strategy for Homeland Defense Steering Committee
- Deputy Secretaries Council Committee

Policy Coordination Committees:

- Domestic Threat Response & Incident Management
  - First Responders Working Group
  - Operations Center Working Group
- Medical & Public Health
  - Domestic Anthrax Vaccination Policy Working Group
- Research & Development
  - National Bio-lab Requirements Working Group
  - Radiological, Nuclear, Conventional/Detection & Response Working Group
- Plans, Training, Exercises and Evaluation
- Communications

Chairman ROCKEFELLER. More or less perfectly handled.

Senator Nelson?

Senator NELSON. Thank you, Mr. Chairman.

With regard to S. 1408, I think the question that I would have and the comment I would have there is I can understand the desire to raise a copay over a period of time. A 350-percent increase in a single year would seem excessive to me, and certainly to those who are most likely to have the need for that could very easily be those least able to absorb this kind of an increase.

One of the problems that we share today is the lack of a Medicare prescription drug benefit, but also we do provide the prescription drug benefits for our veterans. I am very concerned that this is too much too quickly, and while I was Governor I did impose a copay, under the theory of insurance, to deal with utilization and some cost containment for the Medicaid program. So I am not opposed to copays, but this kind of an increase seems to me to be something that you could do gradually over a period of time with less disruption to veterans who could ill afford that kind of an increase, given the fact that many of them are currently experiencing health problems that require a considerable amount of a number of prescriptions.

So it is not just on all of their prescriptions, it is on every prescription, and these days, if you visit with your veterans, as I do, and I know you do, they will have a whole host of little prescription drug bottles there that this drug is for that, and this drug, and they can put 10 or 15 of them out there, and so it is a significant increase to them percentagewise and in financial impact. That is why I understand the desire to recover and control the outgoing flow of dollars, but I am not sure that this is as well thought through as it should be.

Mr. MCCLAIN. Senator, you are referring to the increase in the pharmacy copayment from $2 to $7?

Senator NELSON. Yes.

Mr. MCCLAIN. I am going to defer to Dr. Murphy because I think she has many of the reasons behind that, and also I think there was a provision in your bill regarding a requirement to raise outpatient copays before raising the pharmacy copay at any future time.

Senator NELSON. Exactly.

Mr. MCCLAIN. I will ask Dr. Murphy to address that also.

Dr. MURPHY. Senator, the pharmacy copay was raised to $7 this year. It is a modest cost for increasingly expensive drugs. At the same time, we did lower the cost for basic care in the VA, the basic primary care appointment was lowered from $50 to $15, and that was looked at as a way to balance and reduce copays overall. We will still be charging a $50 copay for specialty care.

Senator NELSON. I understand the logic because it is based on economics, but shifting from one patient's utilization to another patient's utilization may show equity on the balance sheet and the operating statement, but my concern is about the shift of the cost for prescription drugs to individuals who are currently having it. Their dollars may go up, costs may go up, but their utilization of the other kind of care that we have reduced, if you will, the copay, may not affect them, and so we can have a shift.

If they can end up net even, I probably would not have the concern, but there is usually a "shifter" and a "shiftee," and I am worried about, in this case, those who end up with a higher cost for prescription drugs at a time when we do not have Medicare providing it and this is the only facility.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Nelson.

I think your concern, too, had to do with the income level that was——

Senator NELSON. The $9,000-a-year-income level as well.

Chairman ROCKEFELLER. My question, and I really want this on the record, is the question of how your medical research and other programs have been affected by the results of terrorism. HHS and others are doing very well by OMB, and I would think that you would not be happy with the—oh, $2 million you have gotten from the new money being handed out for homeland security. You have received $2 million for preparedness?

Mr. MCCLAIN. Yes, Senator.

Chairman ROCKEFELLER. Oh, that is terrific.

I would not think you would be very happy about that, and I would like to know why you are not very happy about it so that the world can understand a little bit better why you need a seat at the table.

General KICKLIGHTER. Sir, after the terrorist attack on September 11th, our Secretary put together a working group to take a look at what our needs were. We must be prepared. You said this most eloquently in your opening statement, that we must be prepared to, first of all, be able to take care of our veterans that may be in our facilities or our patients and also to be able to take care of our employees to be able to continue to perform their functions under a terrorist attack, and then, also, as you said, this is a tremendous national asset that is in every community all across

America that must be prepared to come to the aid of our Nation when and where possible.

We looked at what it would take to be able to respond. The study indicated that we had a need for about $115 million in 2002, and about $104 million in 2003, and about $78 million in 2004, for us to really be able to take advantage of this unique capability and measure up to this new threat that our Nation faces, both focusing on continuing to support veterans and also being able to respond to the attack or disaster.

The $2 million provided certainly was not adequate, and we still have a need for much more, and we are doing all we can internally, but as you know, there is not a lot of resources that are available to be moved around internally.

Chairman ROCKEFELLER. What gets in my craw is, again, I think too many people think of the VA as they thought of the VA 30 years ago, and everything is different. Again, it is the largest system of integrated health care in this country. If some people say, well, it is a Government-run thing, well, so is the war on terrorism, so is homeland security, for the most part. It is very offensive to me; that research is something that we pride ourselves on in the VA, it is the way we attract and keep physicians. It is offensive to me that you have been overlooked.

Lots of people get overlooked, but this is a case where I think it is not in the national interests, and that is why I think it is important to have somebody from VA at the homeland security planning table. Hence, you name a person. So that is why that bill is in there.

General KICKLIGHTER. Sir, let me make a few comments and I will pass it over to Dr. Murphy.

We could not agree with you more, and we are working hard to ensure that people/other agencies understand what the Department of Veterans Affairs brings to this war. We work a great deal with the Homeland Security Office and the White House. We had Governor Tom Ridge over yesterday for a conference. We had HHS over this past week, Dr. D.A. Henderson and his team. We have met with DOD. We are trying hard to make sure that our Nation understands what unique capability VA has to offer. We believe, once we have discussions/briefings with the other lay offices, they will go away with a new appreciation and understanding. This is a beginning not an end of what we need to do, we will to continue to educate, coordinate, and build relationships.

Chairman ROCKEFELLER. Did the Governor have such a reaction?

General KICKLIGHTER. My perception is he did, and we had his team over about 5 weeks ago, headed by Admiral Steve Abbott and all of his key deputies, and they left there with a new appreciation of what VA offers in the way of emergency response in time of crisis.

We are making progress, but not as much as we would like to, but we are trying.

Chairman ROCKEFELLER. Have you talked with HHS?

General KICKLIGHTER. Yes, sir. We had a meeting with them this past week.

Chairman ROCKEFELLER. Because they are the ones who are getting all of the money.

General KICKLIGHTER. And we pointed that out. [Laughter.]

They agreed that we will start meeting on a monthly basis. In the very near future, we will start having monthly meetings with HHS, FEMA, with the Department of Defense, and with Homeland Security. That is our goal, and we are moving in that direction.

Chairman ROCKEFELLER. Good. And the other agencies have agreed to those meetings.

General KICKLIGHTER. Yes, sir, they have.

Chairman ROCKEFELLER. That is very good. That sounds like it is being handled well.

General KICKLIGHTER. It is a beginning. With that, I will hand over to Dr. Murphy.

Dr. MURPHY. I think General Kicklighter covered the issue very well.

I would just add that one of the misperceptions is that because we are a Federal agency and an executive branch Department, that we are not part of the local communities. In fact, VA is different than many of the departments, in that we are integrated into every city, every community in the country, and VA needs to be there to be part of that Federal public health infrastructure, and we can play a very valuable role if we are given the mission to do so.

Chairman ROCKEFELLER. You are more than integrated, in terms of West Virginia. You play a huge part, and you are geographically dispersed in a perfect way. You are in each part of the State, and to pass this up is just absurd. It is just absurd.

Anyway, we have all of your testimony, and I very much appreciate——

Senator Specter, my total apology, sir. My peripheral vision is not suitable today. Do you have any questions?

Senator SPECTER. Well, I had to go to another committee meeting, Mr. Chairman, so I did not hear the testimony that has been delivered up till now.

But let me ask, in a general sense, Mr. McClain, what do you consider to be the most important area of Veterans Administration activity which needs additional funding?

Mr. MCCLAIN. I think it is homeland security, security and preparedness, Senator.

Senator SPECTER. That activity does benefit the veterans in a general sense, as it benefits all of us, but let me ask for what area of veterans' benefits specifically would you request additional funding—educational benefits? Long-term nursing care? Additional outpatient service? More hospital beds? Where would you place priority insofar as additional spending is concerned?

Mr. MCCLAIN. Well, Senator, I am going to ask Dr. Murphy to address that. Certainly, health care is one of our main concerns.

Senator SPECTER. Dr. Murphy?

Dr. MURPHY. Senator, we support the administration's budget. However, the needs for the veterans' health care system are growing day-by-day. The enrollment rates are outstripping our actuarial predictions for this year, as they did last year. Pharmaceutical costs are going up. Veterans are recognizing that the uniform benefits package that is offered by VA, and the pharmacy benefit, and the quality of care are really unparalleled in the U.S. health care system. Veterans are coming to us in larger and larger numbers.

We are providing care to a million more veterans and we would like to continue to have open enrollment. But in order to meet all of the legislative mandates, maintain the high quality of care and provide that uniform benefits package, we do require the resources that it takes to maintain all of those programs.

Senator SPECTER. Well, I understand, Dr. Murphy, that you obligated to support the administration's budget, but are you prepared to give your professional judgment that the efforts of some of us to supplement VA medical care funding by $2.5 billion would be excessive?

Let the record show a small smile and pause. [Laughter.]

Chairman ROCKEFELLER. No, let the record also show we do not want her to be fired. [Laughter.]

Senator SPECTER. You have the right to remain silent.

Dr. MURPHY. I think what I can say is that the 2003 budget that was put forward gives you an accurate picture of what the needs were at the time the budget projections was put together. The enrollment being above what we had predicted and some of the other health care costs being above projections, there needs to be an adjustment. The $1,500 deductible would require action by this body.

Senator SPECTER. Well, I do not want the General Counsel to avoid some cross-examination.

Mr. McClain, how is the claims adjudication backlog? Do you need more judges? Do you need confirmation of the nominations now pending?

Mr. MCCLAIN. The judges to the Appellate Court, to the Court of Appeals for Veterans' Claims?

Senator SPECTER. Start there.

Mr. MCCLAIN. Certainly, there——

Senator SPECTER. How many vacancies do you have?

Mr. MCCLAIN. Currently, I think there are two on that court, but they just authorized two additional swing slots, so to speak, because the 15-year terms of the initial appointments are now coming up in the next couple of years. That court was constituted in 1989, and so in the next couple of years, they will all——

Senator SPECTER. So we now have Article One judges, Article Three judges and swing judges?

Mr. MCCLAIN. Well, we have got Article One judges.

Senator SPECTER. Tell me what a swing judge is. I know what an Article One judge is.

Mr. MCCLAIN. There was a legislation passed to add two additional judges to the court. There were five originally. There is, for a period of time, up to seven. I am sorry, Mr. Thompson corrected me, from seven to nine. One of the slots was a 13-year appointment in order to begin to stagger the term so that you do not have, in another 15 years, this same turnover of the court.

Senator SPECTER. Is a swing judge a judge appointed for a lesser period of time?

Mr. MCCLAIN. Yes.

Senator SPECTER. So how many vacancies does the court have, counting those which have not been replaced and counting the new slots?

Mr. MCCLAIN. Well, there is one currently. I believe there has been a nomination for that, and we understand that there may be some retirements coming up this year and next year.

Senator SPECTER. Would you provide the committee with what you anticipate there, and give us—my time is up—additional information as to what the backlog is and the adequacy of the existing resources to handle the backlog?

Mr. MCCLAIN. Yes, Senator, I will.

[The information referred to follows:]

FACT SHEET: JUDICIAL CASELOADS AND VACANCIES

CURRENT JUDICIAL VACANCIES

There is currently one vacancy on the U.S. Court of Appeals for Veterans Claims (CAVC). On March 21, 2002, President Bush nominated Mr. Bruce Kasold to fill that vacancy. The nomination is pending in the Senate Committee on Veterans' Affairs.

However, as discussed at the hearing, Section 601 of Public Law 107–103, authorized the temporary expansion of the CAVC to nine members (from its usual seven) in anticipation that several of the judges may retire in the next few years as their terms expire. In fact, Judge Ronald Holdaway has already announced that he will retire in November of this year. The President has not as yet exercised this authority to nominate additional members to the CAVC.

There currently are no vacancies on the twelve-member U.S. Court of Appeals for the Federal Circuit, which hears appeals of CAVC decisions.

PENDING JUDICIAL CASES

- As of May 9, 2002, a total of 1,875 cases were pending before the CAVC, consisting of: 1,607 appeals from the Board of Veterans Appeals, 45 writ petitions, and 223 petitions for fees under the Equal Access to Justice Act.
- As of May 21, 2002, approximately 375 appeals from CAVC decisions were pending before the U.S. Court of Appeals for the Federal Circuit. However, the resolution of 273 of these (involving a common EAJA-fee issue) will be controlled by a decision in three lead cases.

ADEQUACY OF OGC RESOURCES

Barring unforeseen events, we believe the resources currently available to the Office of General Counsel and those requested in the President's FY 2003 budget will permit us to provide timely representation to the Secretary in these matters before the courts.

Senator SPECTER. Thank you. Thank you very much.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Specter.

Let me just close this panel with something that was just handed to me. Getting back to the homeland security aspect, this has been an amazing sequence.

The working group chaired by Charlie Battaglia, who, of course, we all know, identified what it called a "bare bones" need to prepare VA medical centers, and it said "bare bones" was $248 million. The administration asked them to try again, and so they did, and they cut it to $77 million, and out of that you got $2 million. So let the record reflect that.

I thank all of you very much. I appreciate you taking the time to be here.

Mr. MCCLAIN. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Our second panel represents the major veterans service organizations.

First, we have Jim Fischl, who is director of the National Veterans Affairs and Rehabilitation Commission for the American Legion.

If we could have order, I would appreciate it very much.

Second, we have Joe Violante, national legislative director of Disabled American Veterans.

Also, David Tucker, senior associate legislative director, Paralyzed Veterans of America.

Finally, Dennis Cullinan, who is director of the National Legislative Service, VFW.

So we welcome you all and hope that you will keep your statements to 5 minutes. Obviously, your testimony is part of the record.

Mr. Cullinan, we will start with you.

STATEMENT OF DENNIS CULLINAN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. CULLINAN. Thank you very much, Mr. Chairman.

On behalf of the men and women of the Veterans of Foreign Wars of the United States and our Ladies Auxiliary, I wish to express our sincere appreciation for inviting us to testify here today. The activities of this committee are paramount to the proper and timely provision of care, benefits and services to this Nation's veterans by VA. Today's extensive legislative hearing reflects yet another example of your long and proud tradition of service to this Nation's defenders in a strong, directed and bipartisan manner.

I will begin our testimony with S. 984, the Veterans' Road to Health Care Act of 2001. The VFW supports this measure in that it would ensure access to care for nonservice-connected veterans needing VA care and bring the VA rate into conformance with Federal mileage standards. These adjustments are clearly the right thing to do for our veterans.

Next, S. 1408. The VFW strongly supports the Veterans' Copayment Adjustment Act. This bill amends veterans' health care program provisions to conform income thresholds for copayment for outpatient medications to those in effect for hospital and nursing home care and medical treatment. Viewed by the VFW as being essential toward providing access to low-income veterans to VA medications, it is supported by VFW Resolution 635, calling for equity in VA health care copayments. I would also note here that the VFW did send a letter to Secretary Principi calling for just this action.

Next, 1517. The VFW supports the Montgomery GI Bill Improvements Act. This bill acts upon the long-sought VFW objective of amending the basic educational assistance provisions of the GI bill to eliminate the pay reduction currently required of a service member as a precondition of participation.

Next under consideration, S. 1561. We are supportive of this bill to strengthen the preparedness of health care providers within the Department of Veterans Affairs and community-based hospitals to respond to bioterrorism. We strongly recommend, however, that $250 million be authorized, the bare-bones level, for this purpose, in place of the $2 million specified in this bill.

Next, I will talk about S. 1576. The VFW supports this bill to amend Section 1710 of Title 38 to extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War to December 31, 2011. The cause and cures for the disabilities collectively known as Persian Gulf Illness have yet to be found. The termination of health care for those veterans suffering from this affliction would be both premature and wrong.

S. 1680, the VFW also strongly supports this legislation that would extend the protection afforded by the Soldiers' and Sailors' Civil Relief Act to those National Guard members who are called to service by their State Governors at the request of the President. This is the right thing to do.

S. 2003. The VFW supports the Veterans Benefits and Pension Protection Act that would prohibit unscrupulous companies from taking advantage of veterans by bilking them out of their compensation pension or DIC, in return for a so-called lump-sum payment.

Next, S. 2025. The VFW strongly supports this bill, the Living American Hero Appreciation Act, that would increase the amount of the special pension that Medal of Honor recipients receive from $600 per month to $1,000. I emphasize our view that this legislation does not attempt to quantify their honor, but is a sign of the deep respect that all Americans have for these, the very bravest of us all.

Next under consideration, S. 2043. The VFW strongly supports this bill that extends through December 2008 certain long-term care provisions in the Veterans' Millennium Health Care Act. I would share with you or deep disappointment that the provisions of this act have not been properly acted upon some 3 years after they were put into law.

Mr. Chairman, I see that my time is about to expire. I, once again, express our sincere appreciation for inviting our testimony.

Thank you.

[The prepared statement of Mr. Cullinan follows:]

PREPARED STATEMENT OF DENNIS CULLINAN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. Chairman and members of the committee:

On behalf of the 2.7 million men and women of the Veterans of Foreign Wars of the United States and our Ladies Auxiliary, I wish to express our sincere appreciation for inviting us to testify here today. The activities of this committee are paramount to the proper and timely provision of care, benefits and services delivered to this nation's veterans by the Department of Veterans Affairs (VA). Today's extensive legislative hearing reflects yet another example of your long and proud tradition of service to this nation's defenders in a strong, directed and bipartisan manner.

S. 984

The first bill under discussion today is S. 984, the Veterans Road to Health Care Act of 2001. This bill directs the Secretary of Veterans Affairs to pay the travel expenses of a veteran whose travel is in connection with treatment or care for a non-service-connected disability at a non-Department of Veterans Affairs facility if the treatment or care: (1) is provided upon the recommendation of Department medical personnel; and (2) is not available at the Department facility at which the recommendation is made.

It also requires the Secretary, in calculating travel expenses under the Veterans Beneficiary Travel Program, to utilize the current Federal mileage reimbursement rates for use on official business of privately owned vehicles.

The VFW supports this measure in that it would ensure access to care for non-service connected veterans needing VA care and that it would bring the VA rate into conformance with Federal mileage standards. These adjustments are clearly the right thing to do for our veterans. Many must travel long distances just to receive the most basic of services at VA facilities. Right now, they receive just a fraction of the full amount. And in many cases, after the $6 roundtrip deductible is subtracted, veterans receive nothing for their expenses. Although the amount of money this entails may seem small, to our veterans, many of whom are on fixed or limited incomes, it is invaluable. Additionally, we urge the adoption of language as called for by VFW Resolution No. 666 asking the Congress to repeal sections 111(c)(1) and (2) of 38 U.S.C. authorizing deductibles from portions of travel pay made to VA patients.

S.1408

The VFW strongly supports S. 1408, the Veterans' Copayment Adjustment Act. This bill amends veterans' health care program provisions to conform income thresholds for copayment for outpatient medications to those in effect for hospital and nursing home care and medical treatment. Increases in such co-payments are contingent upon the collection of co-payments for outpatient visits for medical services for certain veterans. Viewed by the VFW as being essential toward providing access to low income veterans to VA medications, it is supported by VFW Resolution 635 calling for equity in VA Health Care Copayments. It should also be noted that the VFW sent a letter to the Secretary last year calling for this action. The VFW would also urge consideration of VFW Resolution 639 calling on Congress to exempt all enrollment priority category 5 veterans from having to make medication co-payments.

S. 1517

The VFW supports S. 1517, the Montgomery GI Bill Improvements Act of 2001. This bill acts upon the long-sought VFW objective of amending the basic educational assistance provisions of the Montgomery GI Bill to eliminate the $1,200 pay reduction currently required of service members as a precondition to eligibility for benefits. It also permits certain service members to transfer their entitlement to benefits to their spouses or dependent children. Both VFW Resolution 661 and VFW Resolution 687 support these provisions.

This legislation also extends the period after discharge during which former service members may utilize their benefits and increases benefits available to members of the Selected Reserve called to active duty as part of a contingency operation. This legislation provides for some of the MGIB enhancements called for in VFW Resolution 650, "A GI Bill For The 21st Century."

S. 1561

While supportive of this bill to strengthen the preparedness of health care providers within the Department of Veterans Affairs and community hospitals to respond to bioterrorism, we strongly recommend that $250 million be authorized for this purpose in place of the $2 million specified in this measure. The VFW recommended funding level represents our and the Independent Budget's projection as to the actual need in this critical area. Additionally, it is the amount that was called for by Secretary Principi when speaking before the House Veterans' Affairs Committee last fall.

S. 1576

The VFW supports this bill to amend section 1710 of Title 38, U.S.C., to extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War to December 31, 2011. The cause and cures for the disabilities collectively known as Persian Gulf Illness have yet to be found. The termination of access to VA health care for those veterans suffering from this affliction would be both premature and wrong. VFW Resolution 625 urges support for all Gulf War Veterans.

S. 1680

The VFW also strongly supports S. 1680, legislation that would extend the protections afforded by the Soldiers' and Sailor's Civil Relief Act (SSCRA) to those National Guard members who are called to service by their state governors at the request of the President.

The SSCRA was passed in 1940 to help alleviate some of the financial burdens that being called to active duty military service places on the service members. The SSCRA, among other things, temporarily places an interest rate cap on the debts incurred by an individual, including their mortgage, car loans and credit card debt. In addition, it prevents them from being removed from their house or apartment, and from suffering undue consequences from non-payment of taxes while on active duty.

Currently, National Guard members called to service at the request of the President are eligible for SSCRA's protections. Those members of the National Guard called up in support of Operation Enduring Freedom and the Homeland Defense mission, however, were called up by each of the governors at the President's request and, as a result, are not eligible for protection under the SSCRA.

It simply is not fair that these Guardsmen do not receive the same protections. The men and women protecting and securing our airports, nuclear facilities, and other important locations are tasked with the same responsibilities whether they were called to active duty by the governors at the President's request, or by the President himself. These men and women, whose role is so vital, are given every other general benefit of an active duty service member including VA veteran status and Tricare family health insurance.

Extending the financial protections of the SSCRA to these brave men and women corrects the fundamental inequity and oversight in the law. It is clearly the proper and equitable thing to do.

S. 2003

The VFW also supports this bill, the Veterans Benefits and Pensions Protection Act that would prohibit unscrupulous companies from taking advantage of veterans by bilking them out of their compensation, pension, or dependency and indemnity compensation in return for services, securities, or other agreements. Currently, veterans may not directly assign their benefits to a third party. These companies have found a loophole that they unjustly use to defraud veterans wherein they offer a large lump sum payment in return for the veteran's benefits for a period of time. Unfortunately for the veteran, they receive pennies on the dollar for their benefits and compensation. This legislation would close the loophole and prevent these companies from taking advantage of our veterans.

We also applaud the inclusion of this bill's outreach provisions. Informing veterans and their families of the deceitful practices these companies and individuals use can only lessen the chances that these companies will continue to take advantage of our veterans.

S. 2025

The VFW strongly supports this legislation, the Living American Hero Appreciation Act, that would increase the amount of the special pension that Medal of Honor recipients receive from $600 per month to $1,000 per month. In addition, this legislation would automatically enact a cost-of-living adjustment for the special pension in the future.

This legislation also authorizes the VA Secretary to provide a lump sum payment to all special pension recipients for the period between their actions that warranted the Medal of Honor and the actual date they began receiving their special pension. We believe that this provision is especially important to prevent the singling out of individual Medal of Honor winners. This ensures that all these brave men and women are treated equally and fairly.

The provisions of this legislation are much deserved. Nothing can be said to accurately sum up their important and heroic contributions. This legislation does not quantify their honor; it is a sign of the deep respect that all Americans have for these, the very bravest of us all.

S. 2043

The VFW strongly supports this bill that extends through December 31, 2008, the period during which: (1) noninstitutional extended care services will be considered to be medical services required to be provided by the Secretary of Veterans Affairs to eligible veterans; and (2) the Secretary shall be required to provide nursing home care to veterans with service-connected disabilities. The VFW is deeply disappointed that these services, as provided for in the Millennium Health Care Act almost three years ago, have yet to be properly implemented by VA.

S. 2044

The VFW supports this legislation that amends the Veterans Millennium Health Care and Benefits Act to increase the authorization of appropriations for a program to expand and improve the provision of specialized mental health services to veterans. It also requires the Secretary of Veterans Affairs to allocate specified amounts of such funds among programs: (1) identified by the Mental Health Strategic Health Care Group and the Committee on Care of Severely Chronically Mentally Ill Veterans; (2) on post-traumatic stress disorder; and (3) on substance abuse disorder. The VFW places special emphasis on the plight of our homeless veterans and those suffering from PTSD and substance abuse as providing ample evidence of the need for enhancing VA mental health programs.

S. 2074

The VFW also is pleased to offer our support for this important legislation, the Veterans' Compensation Cost-of-Living Adjustment Act, to provide the annual cost-of-living adjustment to compensation, the clothing allowance, and DIC rates for veterans and their families. It greatly benefits those who are least able to adjust their incomes to keep pace with inflation and is vital to many of our veterans and retirees, many of whom have limited or fixed incomes. VFW Resolution 621 urges the Congress to approve an annual cost-of-living adjustment.

As in past years, we must also point out the inequity of the current rounding provisions. The practice of rounding veterans' compensation down to the nearest whole dollar started as a way of meeting balanced budget goals. Veterans, both in and out of uniform, have done more than their fair share with respect to keeping this nation's fiscal house in order. Although the few dollars savings our veterans would receive each year may not seem like much to you or I, to those on fixed incomes, it could bring some welcome relief. VFW Resolution 620 urges the Committee to end the practice of rounding down veterans' compensation.

S. 2186

The VFW has no objection to this bill, the Department of Veterans Affairs Reorganization Act of 2002, that would increase from six to seven the number of authorized Assistant Secretaries of the Department of Veterans Affairs and would also add Department operations, preparedness, security, and law enforcement to their required functions.

S. 2187

This legislative initiative, the Department of Veterans Affairs Emergency Medical Care Act of 2002, enjoys VFW support. It authorizes the Secretary of Veterans Affairs, during, and immediately following, a disaster or emergency declared by the President, or in which the National Disaster Medical System is activated, to furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by such disaster or emergency. It also authorizes the Secretary, during such period, to: (1) furnish care and services to veterans without regard to their enrollment in the Department of Veterans Affairs annual patient enrollment system; and (2) give a higher priority to the care of individuals involved in or affected by the disaster or emergency over all other eligible groups except service-connected disabled veterans and active-duty military personnel responding to or involved in such disaster or emergency.

The Secretary is further authorized, during and immediately following such a disaster or emergency, to furnish hospital care and medical services to active-duty military personnel responding to or involved in such disaster or emergency. It provides a priority for such personnel over all other eligible groups except service-connected disabled veterans. It is the VFW's position that the Department be provided with all requisite funding to carry out these actions while continuing to fully provide for the veteran patient workload.

S. 2205

The VFW supports this initiative to clarify the entitlement to disability compensation of women veterans who have service-connected mastectomies and to provide permanent authority for counseling and treatment for sexual trauma.

According to VA statistics, women veterans now make up about 5 percent of enrolled veterans, a percentage that is expected to double over the next two decades. The VFW is committed toward ensuring that women veterans receive all VA compensation that is their due and that they enjoy access to the best possible health care, including for gender-specific medical conditions, in the most appropriate set-

ting. The VFW would also urge that such compensation and services also be provided to all male veterans requiring such services. This provision is supported by VFW Resolution 603, which calls for sexual trauma treatment for all veterans.

S. 2209

The VFW is pleased to offer our support for this legislation, the Robert Carey Service Disabled Veterans' Insurance Act, that would make many much-needed changes to the Service-Disabled Veterans' Insurance program (SDVI). SDVI was created to provide insurance for those veterans whose service-connected disability prevents them from receiving commercial life insurance. A recent VA report, Program Evaluation of Benefits for Survivors, studied the various VA insurance programs and determined several problems with SDVI that this legislation addresses.

First, it would increase the maximum coverage to $50,000. The current program has an initial benefit of only $10,000 with the option to purchase $20,000 in supplemental life insurance. Increasing this amount is essential. As VA's report notes, over half of SDVI beneficiaries receive less than $15,000 from all insurance sources—an amount that is far below the recommended insurance level of two to three times the insured's annual income. As SDVI frequently represents the sole, or largest, source of life insurance, the VFW believes that it is imperative that the amount of coverage be increased if VA is to truly meet the intent of the SDVI program.

Second, this legislation changes the actuarial table used to determine premiums for the program. Currently, VA uses an actuarial table from 1941 that does not accurately reflect the improved health and life span all Americans lead due to the developments in medicine and health care over the last 60 years. This outdated table results in veterans paying significantly higher life insurance premiums. Under the current mortality table, for example, a 60-year-old veteran would pay $31.20 per $1,000 of coverage for SDVI. Using the more modern 1980 mortality table, that amount halves to $15.60. Additionally, the outdated table places veterans at an even greater disadvantage when you compare SDVI coverage to what is available on the commercial market. Under a term life insurance plan, that same 60-year-old veteran could pay as little as $4.41 per $1,000 of coverage. The premium rates are unnecessarily high. If VA is to provide insurance at rates comparable to the commercial market, it is essential that the more modern table be used.

This legislation goes a long way towards improving the benefits provided under the SDVI program. The improvements made by this program will greatly aid those veterans who have the greatest difficulty obtaining private insurance coverage. Further, it will encourage more eligible veterans to participate in this worthwhile program. Bringing SDVI's benefits in-line with the private sector is simply the right thing to do for those who have defended our country.

S. 2228

The VFW supports this bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to operate up to 15 centers for mental illness research, education, and clinical activities. Contingent upon the provision of requisite funding, we view this as a valuable initiative toward better serving those whose wounds of war are not physical in nature and whose suffering is often not readily apparent.

S. 2230

The VFW is happy to support this legislation that would make permanent the authority to provide increased financing opportunities to veterans under the VA Home Loan Program by allowing VA to offer conventional and hybrid Adjustable Rate Mortgages (ARMs). Under P.L. 102–547, the VA secretary was authorized to begin a demonstration project to begin offering adjustable rate mortgages through the VA Home Loan program that are similar to the Department of Housing and Urban Development's (HUD) programs.

ARMs allow the mortgagee to periodically adjust the interest rate in accordance with the provisions of the mortgage. ARMs have proven to be very popular alternatives to conventional home financing. They typically offer a lower-than-normal initial interest rate, which may make it easier for our veterans to obtain affordable financing. And, if interest rates drop, the homebuyer can save thousands of dollars above what they would pay using a conventional mortgage.

Despite these advantages, there are some drawbacks. If the interest rates increase, the homebuyer may end up paying more than they normally would, even with the reduced initial interest rate.

As written, we feel that this legislation and the section of code it modifies (Title 38, Section 3707) do an excellent job of safeguarding our veterans from some of the negative consequences this type of mortgage can have. The law contains both periodic and overall interest rate caps to help protect the borrower. Periodic caps limit the amount that interest may increase from one year to the next, while Overall caps prevent the interest rate from increasing above a certain amount over the life of the loan. The current VA program limits the periodic cap to one percent and the overall cap to five percent over the life of the loan.

The VFW believes that permanently expanding the financing opportunities for our veterans is the right thing to do as it helps assure them of the opportunity to pursue the American Dream of home ownership. The advantages of the ARM program may make it a viable alternative for many of our veterans, while the safeguards in the program lessen their chances of harm and, further, it brings veterans in line with what is available to non-veterans through HUD.

S. 2231

The VFW is again pleased to offer our support for S. 2231, the Survivors' and Dependents' Educational Assistance Adjustment Act. This legislation would make the monthly benefit amount under the Dependents' Educational Assistance Program (DEA) equal to what veterans receive under the Montgomery GI Bill (MGIB). It would also increase the funding provided to support the important tasks of the State Approving Agencies (SAAs).

The DEA program provides education and training benefits for the spouse and children of a veteran who is permanently and totally disabled, or who dies from a service-connected disease. We believe that this worthwhile program helps us show our gratitude for the family's loss and compensates the spouse and children for the loss of income and support that would have been provided by the veteran were it not for his or her service-connected disability. We feel that providing an increased benefit would result in increased usage, allowing more surviving spouses and children to have an opportunity to not only support their families, but to better themselves and make valuable contributions to society.

The VFW is also proud to strongly support the provisions of S. 2231 that would increase the amount of funding available to SAAs. SAAs are an essential component of the administration of the MGIB and other VA educational programs. They evaluate, approve, and supervise the GI Bill programs within their respective states. It is their responsibility to ensure that veterans have access to a quality education that will benefit them long into the future.

Increasing their funding is essential. Between 1995 and 2000, their budget was flat-lined. Only in the last two years have they received a slight increase. If this legislation does not pass, their funding will revert to the same level they had seven years ago. SAAs have had to deal with this difficult budgetary situation all while dealing with many increased responsibilities. Passed just last year, The Veterans' Education and Benefits Expansion Act (P.L. 107–103) greatly increases the responsibilities of SAAs, particularly through its emphasis on benefits for training in hi-tech courses and schools. These classes must all be evaluated for their appropriateness and educational value. Once approved, the SAAs must ensure continued compliance with all state and federal regulations. It is clear that their burden has increased; it is time that their budget did the same.

Mr. Chairman and Members of the Committee, this concludes the VFW's testimony. We again thank you for including us in today's most important discussion and I will be happy to respond to any questions you may have. Thank you.

Resolutions Adopted by the 102nd National Convention of the Veterans of Foreign Wars of the United States Held in Milwaukee, Wisconsin, August 18–24, 2001

RESOLUTION NO. 603.—SEXUAL TRAUMA TREATMENT FOR ALL VETERANS

WHEREAS, some veterans (women and men) suffer personal assault and/or sexual trauma while serving in active duty; and

WHEREAS, many veterans who suffer from sexual trauma are not eligible to receive sexual trauma treatment and counseling from the Department of Veterans Affairs because they are in the National Guard/Reserve or they lack the minimum 24-month active duty service requirement; and

WHEREAS, the current Sexual Trauma Treatment Program under the auspices of the Department of Veterans Affairs is temporary; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that there will be established permanent VA programs for all veterans who need sexual trauma treatment; and

BE IT FURTHER RESOLVED, that the Veterans of Foreign Wars insists there be absolutely no limitations or restrictions to access of VA sexual trauma treatment services thereby making such treatment available to all veterans regardless of their length of service or reserve status.

RESOLUTION NO. 620.—REPEAL SECTION 8005 OF PUBLIC LAW 101–508

WHEREAS, Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA), contained a provision that veterans' compensation and Dependency and Indemnity Compensation (DIC) be rounded down to the next lower dollar; and

WHEREAS, veterans, whose earning power is limited or completely lost because of service-connected disabilities, must rely on compensation for the necessities of life; and

WHEREAS, surviving spouses of veterans who died of a service-connected disability often have limited or no income other that DIC; and

WHEREAS, compensation and DIC rates are modest, and erosion due to inflation has a direct impact on recipients with fixed income; and

WHEREAS, the OBRA provisions were instituted solely as a means to balance the budget; and

WHEREAS, veterans have sacrificed extensively since 1990 as part of the duty of all Americans to help balance the budget; and

WHEREAS, there is no longer a need for such budget balancing measures when it is estimated that the government will now have a projected budget surplus over $5 trillion in the future; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we urge Congress to repeal section 8005 of Public Law 101–508, which requires the Department of Veterans Affairs to round down to the next lower dollar, veterans' compensation and DIC.

RESOLUTION NO. 621.—COST-OF-LIVING INCREASE FOR VA BENEFICIARIES AND MILITARY RETIREES

WHEREAS, payments to VA beneficiaries and military retirees must be protected from inflation; and

WHEREAS, many VA beneficiaries and military retirees live on limited or fixed incomes; and

WHEREAS, many other segments of society have a better ability to adjust their incomes to compensate for inflation so that they are not adversely affected by cost-of-living increases; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we urge Congress to provide timely annual increases in an amount at least commensurate with the Consumer Price Index (CPI) for all Department of Veterans Affairs' beneficiaries and military retirees.

RESOLUTION NO. 625.—SUPPORT FOR GULF WAR VETERANS

WHEREAS, during the Persian Gulf War, according to official military reports, members of the armed forces were exposed to various toxic substances and environmental hazards, and

WHEREAS, many of these veterans, and in some cases their dependents and survivors. are now suffering from illnesses, or manifesting symptoms of illnesses that may be attributed to their service in the Persian Gulf, and

WHEREAS, many Gulf War veterans did not begin to manifest symptoms until several years after returning from the Persian Gulf theater of operation; and

WHEREAS, according to some scientific studies and reports, Gulf War veterans are reporting symptoms at a greater rate than their peers who did not deploy to the Persian Gulf; and

WHEREAS, Public Law 105–277, Persian Gulf Veterans Act of 1999 and Public Law 105–368, Veterans Programs Enhancement Act of 1998, requires the Secretary to enter into an agreement with the National Academy of Sciences (NAS) to review available scientific and medical evidence with the end goal to determine whether there is sufficient evidence to warrant presumption of service connection for the occurrence of a specified condition; and

WHEREAS, current available medical and scientific evidence has vet to determine the cause, effects, or latency period for the illnesses or symptoms associated with service in the Persian Gulf; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we continue to urge the Secretary of Veterans Affairs to establish a open-ended presumptive period until medical and scientific research can be adequately utilized to help determine an appropriate time in which conditions associated with Gulf War service will manifest; and

BE IT FURTHER RESOLVED, that we urge the Department of Defense and the Department of Veterans Affairs to provide health care for all active duty military and veterans and, as appropriately determined, their dependents and survivors, whose health has been adversely affected by the Persian Gulf War, and to conduct all necessary tests to determine the causes of these illnesses; and

BE IT FURTHER RESOLVED, that we urge Congress to adequately fund appropriate medical and scientific research, and the Departments of Defense, Health and Human Services, and Veterans Affairs to implement all relevant laws that support all research efforts.

BE IT FURTHER RESOLVED, that we shall petition the Departments of Veterans Affairs and Defense to define the Persian Gulf War region (also known as the Kuwait Theater of Operation and Southwest Asia Theater of Operations) under 38 USC § 1117 and 10 USC § 101. The Gulf War should be defined as the period "Beginning on August 2, 1990, and ending thereafter on the date prescribed by Presidential proclamation or by law, and including the following geographic locations: Iraq, Kuwait, Saudi Arabia, Egypt, Israel, Turkey, Syria, Jordan, Bahrain. Qatar, United Arab Emirates, Oman, Neutral Zone between Iraq and Saudi Arabia, Yemen, Persian Gulf, Arabian Sea, Gulf of Aden, Gulf of Oman, Gulf of Suez, Suez Canal, Gulf of Aqaba, and Red Sea."

RESOLUTION NO. 635.—EQUITY IN VA HEALTH CARE CO-PAYMENTS

WHEREAS, Public Law 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985, allowed certain categories of veterans, in order to become eligible for VA health care, to pay a co-payment in an amount equal to 20 percent of the estimated average cost (which in Fiscal Year 2000 was $229.00); and

WHEREAS, VA has no accounting system capable of tracking actual costs for the care it provides and had to use an alternate mechanism to calculate the average cost per veteran. In Fiscal year 2001, non-service connected, category 7 veterans are required to pay an outpatient co-payment of $50.80 for each outpatient visit; and

WHEREAS, VA has established a system designed to bill a veteran's insurance company for "reasonable charges." This system-bills the veteran's insurance company at a rate of $35.00 for an office visit while the veteran pays a co-payment fee of $50.80; and

WHEREAS, due to this calculation, a non-service connected veteran's co-payment cost continues to rise each year requiring a veteran to pay a co-payment much higher than that for an average office visit in the private sector and what VA bills the veterans insurance company. This creates a justifiable reason for veterans not to choose VA as their primary health care provider; and

WHEREAS, the Millennium Bill authorized the Secretary of Veterans Affairs to adjust the veterans co-payment for care as deemed appropriate and as of this convention has yet to be changed; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that the Secretary of Veterans Affairs immediately address this issue of fair, Just, and equitable co-payments for category 7 veterans.

RESOLUTION NO. 639.—VA ALZHEIMER'S FACILITY

WHEREAS, all the state veterans homes in the U.S. average about 30% Alzheimer's patients and/or some form of dementia conditions, who are inappropriately placed in the traditional nursing home setting; and

WHEREAS, only a few Alzheimer's facilities even exist in the United States; and

WHEREAS, the Department of Veterans Affairs construction budget funds for veterans nursing homes, but does not have authorization to fund any unique projects in long term care; and

WHEREAS, the aging of our veteran population will only increase the need for nursing home beds which are being filled with dementia patients inappropriately placed in these facilities; and

WHEREAS, veterans with Alzheimer's disease need facilities designed for their particular condition, as opposed to assigning them to traditional nursing homes: now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we support the need for Alzheimer's facilities for veterans and urge VA to maintain an open Alzheimer's unit within each Veterans Integrated Service Network; and

BE IT FURTHER RESOLVED, that these facilities be uniquely designed for veterans with Alzheimer's disease using other than the routine medical or psychiatric care models. The program should include Alzheimer's research as an integral part of the veteran's treatment program.

RESOLUTION NO. 650.—A GI BILL FOR THE 21ST CENTURY

WHEREAS, the original GI Bill, which is recognized as one of the most profound pieces of legislation Congress passed last century, enabled millions of America's veterans, who otherwise might not have been able to afford an education, to attend college or receive vocational training; and

WHEREAS, the current Montgomery GI Bill does not keep up with inflation or the rising cost of higher education; and

WHEREAS, legislation pending before the 107th Congress would fully address VFW's resolution that all members of the Armed Services be able to attend any college, university or vocational school to which they are accepted; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we urge Congress to enact a new GI Bill for the 21st Century which would provide an educational benefit that covers the cost of tuition, fees, books and related expenses along with a stipend to cover housing expenses, at the university or college of the veteran's choice.

RESOLUTION NO. 661.—REPEAL OF THE MONTGOMERY GI BILL PAY REDUCTION PROVISION

WHEREAS, a provision of the Montgomery GI Bill (MGIB) law requires service members who wish to participate in the MGIB program to agree to a pay reduction of $1200 during the first year of their enlistment; and

WHEREAS, a pay reduction of $100 per month for twelve consecutive months can, and often does, present a hardship to young service members whose salaries tend to be low during the initial enlistment; and

WHEREAS, the MGIB of 1985, in requiring the $1200 pay reduction as a condition of participation, makes a sharp departure from the spirit of previously enacted GI Bill Educational Assistance programs, where service members were not required to assist in financing their education benefits; and

WHEREAS, a substantial number of service members have suffered economic hardship due to the MGIB pay reduction provision, and the fact that monies paid into the program cannot be refunded, even when the service member changes his/her mind about pursuing higher education or training; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we hereby petition Congress to repeal the pay reduction provision of the Montgomery GI Bill.

RESOLUTION NO. 666.—VETERANS TRAVEL PAY

WHEREAS, Title 38 United States Code section 111 authorizes the Secretary of Veterans Affairs to pay the actual expenses of travel (including lodging and subsistence) or, in lieu thereof, an allowance based upon mileage traveled; and

WHEREAS, the law requires a $6.00 roundtrip deductible ($3.00 one way) with a maximum deductible of $18.00 within a calendar month; and

WHEREAS, the majority of veterans who use this benefit are primarily on a fixed income, and to have them absorb the $18.00 deductible places a hardship on these veterans; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we urge Congress to repeal section 111(c)(1)(2) Title 38 U.S.C. that authorizes deductibles from portions of travel pay made to VA patients.

RESOLUTION NO. 687.—SUPPORT TRANSFERABILITY OF EDUCATIONAL BENEFITS TO A DEPENDENT FAMILY MEMBER

WHEREAS, the retention of trained, skilled, and experienced military personnel continues to be a major national security issue; and

WHEREAS, active duty military personnel are often unable to utilize their educational entitlements due to the demands placed upon them by their duties and responsibilities; and

WHEREAS, the Commission on Service Members and Veterans Transition Assistance, recommended that Congress provide beneficiaries with the ability to transfer their education benefits to spouses and children; and

WHEREAS, the children and spouses of military personnel are often unable to attend institutions of higher learning due to financial inability or hardship; now, therefore

BE IT RESOLVED, by the Veterans of Foreign Wars of the United States, that we recommend that Chapter 30 Title 38 United States Code be amended to allow active duty military personnel to transfer or assign their educational benefits to dependent spouses or children.

Chairman ROCKEFELLER. Thank you, sir.

Mr. Tucker?

STATEMENT OF DAVID TUCKER, SENIOR ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. TUCKER. Chairman Rockefeller, we appreciate this opportunity to present our views on the legislation that we are facing today on today's agenda. We have so much legislation and so little time, so I will limit my remarks to the measures relating to the VA's fourth mission and long-term care.

The VA has four health care missions. The primary mission is the provision of health care to veterans; the second is to provide education and training for health care personnel; the third is to conduct medical research; and the fourth, in the words of the General Accounting Office, is to serve as a back-up to the Department of Defense health system in war or other emergencies and as a support to communities following terrorist incidents and other major disasters.

A major component of the VA's fourth mission is to assist States and localities. In fact, as the GAO points out, the VA is the primary back-up to other Federal agencies during national emergencies. We could not agree with you more, Mr. Chairman, that the VA needs to have a seat at the table as we are discussing what our national response is in this time of national emergency.

As our public health system has been reduced, the VA's role has, over the years, grown larger. The VA is the only health care system that is capable of providing a comprehensive and national response to the threats we face from terrorist activities and national disasters and emergencies. The VA must be prepared and provided with the resources it needs, as well as explicit statutory guidelines to accomplish its comprehensive and vital fourth mission. There are four bills before us today that take important steps in advancing this goal.

We strongly support S. 2187, the Department of Veterans Affairs Emergency Medical Care Act of 2002. This measure would clarify in Title 38 the VA's critical fourth mission.

In addition, we support S. 1561, introduced last October, that would authorize $2 million in fiscal year 2002 to assist the VA in meeting its responsibilities. Of course, we believe that the VA must be authorized at a far, far higher level than the $2 million, but this is at least a step in the right direction.

We support S. 2132, a measure that would establish for four Medical Emergency Preparedness Centers. We have previously testified in favor of a similar measure introduced in the House of Representatives.

Finally, we support S. 2186, the Department of Veterans Affairs Reorganization Act of 2002, a bill introduced by request that au-

thorizes the addition of an Assistant Secretary to oversee the VA's "operations, preparedness, security and law-enforcement functions."

Taken together, these bills represent a serious initial response to adequately addressing the scope of the VA's fourth mission in this time of national emergency, but we believe that more needs to be done. Unfortunately, amongst a growing recognition of the VA's critical role in assisting our States and localities, the administration has failed to step forward and provide the funding necessary to accomplish this important mission, nor the leadership necessary to move forward. It is estimated that the VA will require $250 million in fiscal year 2003 to begin to satisfy these requirements.

The VA will be attempting to meet its many responsibilities as part of this mission, but we must ensure that this important work does not come at the expense of the VA's three other critical missions, especially the provision of health care to sick and disabled veterans.

Let us be clear on this point. Without these additional resources, the funding needed as part of this national effort will have to come out of the resources available to provide health care to veterans.

We support S. 2043, a bill that extends the period for the provision of noninstitutional extended care services and required nursing home care. As the hearing recently held by your committee demonstrated, the VA has been woefully negligent in meeting its responsibilities of the Millennium Act.

I see my time is quickly advancing on me here.

We also want to make sure that you recognize our strong opposition to Title II of S. 2229. That is a measure introduced by the VA that would allow the VA to include nursing home care furnished by private providers and State veterans' nursing homes when reporting its capacity requirements under the Millennium Act. Enacting this provision would provide the VA with a gimmick that would allow it to claim that it is maintaining the capacity required by law. The fact is that the VA has done little to provide these required services and now is searching for a way to circumvent the law and still claim that it is meeting its capacity requirement reporting requirements.

The VA's experience with long-term care is a real national asset and an asset that we must not allow to be frittered away. It is our hope that this committee will continue to push the VA to provide the full range of care that is mandated currently by law.

Thank you very much, Mr. Chairman. That concludes my remarks.

[The prepared statement of Mr. Tucker follows:]

PREPARED STATEMENT OF DAVID TUCKER, SENIOR ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Chairman Rockefeller, Ranking Member Specter, members of the Committee, on behalf of the Paralyzed Veterans of America (PVA) I am pleased to present our views on the 27 pieces of legislation on today's agenda.

VA'S 4th MISSION

The Department of Veterans Affairs (VA) has four critical health-care missions. The primary mission is the provision of health-care to veterans. VA's second mission is to provide education and training for health-care personnel. VA's third mission is to conduct medical research, and its fourth, in the words of the Government Accounting Office (GAO), is "to serve as a backup to the Department of Defense (DOD)

health system in war or other emergencies and as support to communities following domestic terrorist incidents and other major disasters." A number of measures before us today address this critical 4th mission.

Public Law 97–174, the "Veterans' Administration and Department of Defense Health Resources Sharing and Emergency Operations Act," currently part of 38 U.S.C. § 8111A, established the VA as the principal medical care backup for military health care "[d]uring and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict[.]" 38 U.S.C. § 8111A. On September 18, 2001, in response to the terrorist attacks on September 11, 2001, the President signed into law (P.L. 107–40) an "Authorization for Use of Military Force" which constitutes specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution. This authorization satisfies the statutory requirement that triggers the VA's responsibilities to serve as a backup to the Department of Defense (DOD).

An important part of the VA's 4th mission is to assist states and localities. In fact, the GAO, in its January 2001 report entitled "Major Management Challenges and Program Risks" (GAO–01–255) characterizes the VA's role as the "primary backup to other federal agencies during national emergencies."

The GAO has further characterized the VA's role as serving as a "backup to the Department of Defense (DOD) health system in war or other emergencies and as support to communities following domestic terrorist incidences and other major disasters[.]" The GAO makes an important point stating that the "VA's role as part of the federal government's response for disasters has grown with the reduction of medical capacity in the Public Health Service and military medical facilities." The VA is the only health care system that is capable of providing a comprehensive and national response to the threats we face from terrorist activities and national disasters and emergencies.

The VA must be prepared, and provided with the resources it needs, as well as explicit statutory guidelines, to accomplish this comprehensive and vital mission. These bills take important steps in advancing this goal.

PVA strongly supports S. 2187, the "Department of Veterans Affairs Emergency Medical Care Act of 2002." This measure would clarify the VA's critical 4th mission. In addition, PVA supports S. 1561, introduced last October, that would authorize $2 million in FY 2002 to assist the VA in meeting its responsibilities under its 4th mission.

PVA supports S. 2132, a measure that would authorize the establishment of four medical emergency preparedness centers. We have previously testified in favor of a similar measure introduced in the House of Representatives. PVA also supports sections 2 and 3 of S. 2132 which make important modifications, technical in nature, to the VA's research corporations. Finally, PVA supports S. 2186, the "Department of Veterans Affairs Reorganization Act of 2002," a bill introduced by request that would authorize the addition of an Assistant Secretary to oversee the VA's "operations, preparedness, security and law enforcement functions."

Taken together, these bills represent a serious initial response to adequately addressing the scope of the VA's critical 4th mission in this time of national emergency. But we believe that more needs to be done.

Unfortunately, amongst the growing recognition of the VA's critical role in assisting our states and localities, the Administration has failed to step forward and provide the funding necessary to accomplish this important mission, nor the leadership necessary to move forward. It is estimated that the VA will require $250 million in fiscal year 2003 to begin to satisfy its 4th mission requirements. The VA will be attempting to meet its many responsibilities as part of its 4th mission, but we must ensure that this important work does not come at the expense of the VA's three other critical missions, especially the provision of health care to sick and disabled veterans.

LONG-TERM CARE

As The Independent Budget stated:

> On November 30, 1999, the Veterans Millenium Health Care and Benefits Act was signed into law. The Millenium Act's long-term care provisions made it clear that inpatient and outpatient long-term care services are integral parts of the system of care that VHA [Veterans Health Administration] is to provide for enrolled veterans. The law also specified that, like other specialized services, VHA's inpatient long-term care is a unique national resource and its capacity must not be diminished in the process of VHA's restructuring and realignment. Two years have passed since the passage of the law and no implementing regulations have been issued. VHA continues to reduce its inpatient long-term care

capacity and enrolled veterans do not know that they have access to these services.

PVA supports S. 2043, a bill that would extend the period for the provision of non-institutional extended care services and required nursing home care. As the hearing recently held by this Committee demonstrated, the VA has been woefully negligent in meeting its responsibilities under the "Veterans Millenium Health Care and Benefits Act of 1999," P.L. 106–117.

This Act required the VA to provide extended care services to enrolled veterans, to include nursing home care to any veteran who is in need of such care for a service-connected condition, or who is 70 percent or more service-connected disabled. PVA was a strong advocate for the enhanced alternatives to institutionalization such as Adult Day Health Care, Respite Programs, as well as improvements to the State Veteran Home Program.

It is our hope that this Committee will continue to push the VA to provide this care that is mandated by law. We look forward to working with the Committee to ensure that the VA fully complies with these important statutory provision.

PVA strongly opposes Title II of S. 2229, the "Veterans Benefits Improvement Act of 2002," introduced at the request of the VA. This provision would allow the VA to include nursing home care furnished by private providers and State veterans' nursing homes when reporting the capacity of its extended care services. Enacting this provision would provide the VA with a gimmick that would allow it to claim that it is maintaining the capacity required by law. The fact is that the VA has done little to provide these required services, and now it is searching for a way to circumvent the law and still claim that it is meeting capacity requirements.

HEALTH-CARE ISSUES

PVA strongly supports S. 1408, the "Veterans' Copayment Adjustment Act." Last year, we fought a concerted battle to ensure that veterans living in higher-cost geographical areas were not unduly penalized by a "one size fits all" means test. We were able to achieve passage, and enactment, of a compromise version that limits the amounts paid in co-payments by veterans with income levels above the VA's means test but below the Low Income Index established by the Department of Housing and Urban Development.

S. 1408 would increase the current $9000 threshold for exemption from pharmaceutical co-payments, and raise it to the standardized level of $24,000. We also applaud Section 3 of S. 1408 that requires the VA to delay implementing increases in prescription co-payments until there is a more equitable adjustment in the co-payments for other health care services.

PVA supports S. 1576, which would extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War for an additional 10 years. In January, this eligibility, which had expired on December 31, 2001, was extended an additional year. S. 1576 would provide the 10 year extension that was originally intended last year. This bill represents the responsibility that the VA has to care for our service men and women who have been placed in harm's way.

PVA supports S. 2044, which would expand and improve the provision of mental health services to veterans by providing an addition $10 million in health care grants, and S. 2228, which would increase from 5 to 15 the number of Mental Illness Research Education and Clinical Care (MIRECC) Centers. The Independent Budget explicitly called for increased funding for the VA's MIRECC Centers. The VA's wide variety of mental health programs, together with other specialized services such as blind rehabilitation, prosthetics, amputee services, and our own spinal cord dysfunction services, are the core programs of VA health care. Congress has given them special status, mandating in P.L. 104–262 that VA maintain the capacity to provide these services. This bill would greatly assist the VA's capacity to treat veterans with mental illness, particularly Post Traumatic Stress Disorder (PTSD) and substance abuse disorders.

The Independent Budget called for the VA to "increase the priority given to women veterans programs to ensure that quality health care is provided and that services are maintained," as well as calling on the VA to "not fail to meet [the] identified needs of [veterans] who have experienced sexual trauma during military service." We are pleased that S. 2205 supports these recommendations. In addition, we support Section 1 of S. 2205 that more fully complies with Congressional intent regarding disability compensation and mastectomies. We also support Section 101 of S. 1905 that would delineate the provision of health care for newborn children of enrolled veterans. Although not dealing with health-care issues, we do not oppose the other provisions of S. 1905.

Finally, we support S. 2227 which clarifies the calculation of annuities for retired personnel, and reiterates the Congressional intent behind the "Department of Veterans Affairs Health Care Programs Enhancement Act of 2001," P.L. 107–135. This Act provided the VA with, as Chairman Rockefeller stated, "several tools to respond to the looming nursing crisis."

VETERANS' BENEFITS

PVA supports the language increasing the veterans beneficiary travel reimbursement rate from 11 cents-per-mile to the government rate, currently 34.5 cents-per-mile, in S. 984, the "Veterans Road to Health Care Act of 2001." We must, however, express concern over the language contained in S. 984 that would authorize the payment of travel expenses to veterans seeking non-service-connected care at non-VA facilities. We appreciate the intent behind this provision, but are concerned about the expansion of this benefit to cover non-service-connected conditions treated at non-VA facilities.

PVA supports S. 1680, a measure to amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that duty of the National Guard mobilized by a State in support of Operation Enduring Freedom or otherwise at the President's request be deemed military service under the 1940 Act. This bill would provide the important financial protections found in the 1940 Act to the men and women who have been called up since September. This is a matter of simple equity. These individuals called up under these limited circumstances have faced extended duty and suffered real financial hardships. We ask that this Committee find a way to ameliorate these inequities.

PVA supports S. 2003, the "Veterans Benefits and Pensions Protection Act of 2002." This measure would provide protection to some of our most vulnerable veterans. S. 2003 would close a current loophole by prohibiting assignment contracts entered into for specified periods. The VA Inspector General has stated that "these schemes seem to target the most financially desperate veterans who are most vulnerable. For many unsuspecting veterans these benefit buyouts could be financially devastating."

PVA supports S. 2074, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for certain disabled veterans. We oppose again this year, as we have in the past, the provision rounding down to the nearest whole dollar compensation increases.

An important goal of PVA, and The Independent Budget, has been the reform of the Service Disabled Veterans' Insurance program. In fact, The Independent Budget has recommended legislation authorizing the VA to revise its premium schedule to reflect current mortality tables, rather than relying on mortality tables from 1941. We support S. 2209, the "Robert Carey Service Disabled Veterans' Insurance Act of 2002." This measure would not only provide the authority to update these antiquated mortality tables, a move that will drastically decrease premiums, but will also create a new insurance program for service-disabled veterans offering as much as $50,000 in coverage at prices comparable to commercial policies.

PVA supports S. 2230, a bill that would make permanent the authority of the VA to guarantee adjustable rate mortgages (ARMS), and authorize the guarantee of hybrid adjustable rate mortgages. As Senator Specter stated when introducing this measure, that "while home buyers must be prudent in choosing to use ARM financing, foreclosing the option to veterans, in my estimation, smacks of paternalism. ARM loans are insured by FHA [Federal Housing Administration]; my legislation would simply apply to the VA loan guaranty program a principle already embraced by FHA and the commercial lending sector: one type of financing does not meet all home buyer needs."

We support S. 2237, the "Veterans Hearing Loss Compensation Act of 2002." This is an important matter of simple fairness to veterans. As the United States Court of Appeals for the Federal Circuit stated in *Boyer* v. *West,* 210 F.3d 1351 (2000), affirming a decision by the Court of Appeals for Veterans' Claims, "[a]ny changes that parties may seek in order to eliminate a statutory incongruity should be brought to the attention of Congress." The inequitable treatment accorded to veterans with service-connected hearing loss has been brought to the attention of Congress, and S. 2237 is the result. We also applaud Senator Rockefeller for calling for an exhaustive study that will help the VA better understand the effect of certain military specialties on hearing loss.

PVA fully supports S. 2079, a bill to facilitate and enhance judicial review of veterans' benefits. We note that this measure encompasses recommendations made in The Independent Budget. Section 1 would provide an important oversight role with-

in our Constitutionally-mandated Separation of Powers framework. As Gellhorn and Levin stated in Administrative Law and Process (West Publishing Co., 1997), "judicial review [is] generally regarded as the most significant safeguard available to curb excesses in administrative action." Section 1 of S. 2079 provides for this important safeguard.

Section 2 of S. 2079 makes enforceable the "benefit of the doubt" statutory standard, a pro-veteran standard fully supported by Congress. Section 3 would enable judicial review of decisions of law made by the Court of Appeals for Veterans' Claims, and Section 4 would allow non-attorney practitioners recognized by the Court access to award fees under the Equal Access to Justice Act. PVA urges this Committee to take swift action and report this measure favorably.

PVA supports S. 1113, a bill that increases the amount of special pension for those veterans who were awarded the Medal of Honor. The veterans who were awarded this highest of military honors epitomize the virtues of courage and sacrifice. They deserve the benefits provided by this bill. PVA supports Section 2 of S. 2025, which provides for this same increase in the Medal of Honor pension. We also supports Section 3 of S. 2025, which would make it a criminal offense to "knowingly wear, possess, manufacture, purchase, or sell a Medal of Honor, or the ribbon, button, or rosette." Any activity such as this is disrespectful to the valor of those individuals who rightfully wear this award.

Finally, PVA does not oppose S. 2060, a bill that would name the VA Regional Office in St. Petersburg, Florida, after Franklin D. Miller.

EDUCATIONAL BENEFITS

As we testified before this Committee last year, "PVA believes that the over-arching goal of Montgomery GI Bill (MGIB) legislation should be first, the improvement of benefits; second, the provision of flexible alternatives to traditional university education to meet the needs of a new century while staying true to the intent underlying the MGIB; and third, the provision of transferability as a tool to retaining the men and women who possess the critical skills and specialties demanded by our evolving Armed Services."

In light of this, PVA supports S. 1517, the "Montgomery GI Bill Improvements Act of 2002." The provisions proposed in this bill stem from the recommendations of the U.S. Commission on National Security/21st Century, co-chaired by former Senators Gary Hart and Warren Rudman. The Hart-Rudman Commission recommendations called for improvements in veterans' educational assistance benefits in order to ensure that our Armed Forces are able to recruit and retain highly qualified and dedicated individuals into the service. This measure encompasses four out of the seven recommendations of this Commission.

PVA supports Section 2, which would eliminate the $1200 cost to service members in order to be eligible for the benefits. Likewise, we support the transfer of entitlements as outlined by Section 3. It is important that service members be given the option of assisting in the education of their dependents if they so desire. PVA also supports Section 4 and Section 5 as proposed.

PVA supports Section 2 of S. 2231, the "Survivors' and Dependents' Educational Assistance Adjustment Act of 2002." The legislation would increase the rate of monthly Survivors' and Dependents' Education Assistance benefits from $670 to $985 over a two-year period. PVA also supports Section 4 of the bill that would increase funding for State Approving Agencies, which certify educational programs provided to veterans, from $13 million to $18 million. State Approving Agencies are vital in determining the quality of educational institutions and programs that are available to veterans. The proposed increase in the funding for the State Approving Agencies will ensure that only the highest quality education programs are available to veterans and will better ensure that they are able to take advantage of these programs. PVA opposes Section 3, which would reduce the time available for education assistance from 45 months to 36 months.

This concludes PVA's testimony. Again, we appreciate this opportunity to express our views on legislation pending before this Committee. I will be happy to respond to any questions.

Chairman ROCKEFELLER. Thank you, Mr. Tucker.

Remember, everything is included, so it is not that you——

Mr. TUCKER. I kind of felt like an auctioneer there for a little bit.

Chairman ROCKEFELLER. You did not get to say everything you wanted, but everything you have written is received.

Mr. TUCKER. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Mr. Violante?

STATEMENT OF JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR OF THE DISABLED AMERICAN VETERANS

Mr. VIOLANTE. Thank you, Mr. Chairman. I am pleased to provide the views of Disabled American Veterans on the pending legislation.

First, let me say we deeply appreciate and value the advocacy this committee has always demonstrated on behalf of the men and women of America's armed forces.

Although not on today's agenda, we have touched on the crisis of VA health care, and I would like to briefly talk about a possible solution. DAV has begun a campaign to guarantee that veterans who seek medical services provided by VA actually receive the care they need. Changing veterans' health care from a discretionary to a mandatory program would correct the existing problem, where annual funding of veterans' health programs falls far short of what is required to serve the enrolled veterans. Making veterans' health care mandatory would eliminate the year-to-year uncertainty about funding levels that has prevented the VA from adequately planning for and meeting the growing needs of veterans seeking treatment. I hope we can count on this committee's support.

My oral remarks this morning will focus solely on S. 2079. This bill includes important changes to law to make the judicial review process for veterans more efficient and effective. Given the special purposes of benefits for veterans, the process is designed to error in favor of the veteran when the VA must choose between allowance and denial in a close case. This principle is given legal effect in the statutory benefit of the doubt rule. VA can legally find against a veteran only when the evidence favoring the veteran is outweighed by negative evidence.

Although this bedrock rule is the foundation for the resolution of material questions of fact in veterans' claims, the Court of Appeals for Veterans' Claims rarely reviews VA decisions to ensure the rule was properly applied.

Under current law, the Veterans Court upholds factual findings by the Board of Veterans Appeals unless they are clearly erroneous. That means a veteran can be deprived of benefits when there is some slight evidence that gives the Government a plausible reason for denial, and it renders the benefit of the doubt rule meaningless. The amendment made by section 2 of this bill will give veterans their day in court, as originally envisioned by the Judicial Review Act.

Section 3 will make another important change to strengthening the appellate process for veterans by filling a void in the jurisdiction of the Court of Appeals for the Federal Circuit. As a matter of sound public policy, fairness to veterans and the overall effectiveness of judicial review, the jurisdiction of the Federal Circuit should be expanded to include ordinary questions of law. The American Bar Association and the Federal Circuit Bar Association supports this expansion, as does the Independent Budget and, of course, the DAV.

Section 1 of the bill addresses another void in the jurisdiction of the Federal Circuit. Although the Federal Circuit has jurisdiction

to consider petitions challenging the legality of regulations issued by VA, Section 502 of Title 38, United States Code, immunizes from judicial review an action relating to the adoption and revision of the schedule for rating for disabilities. Congress wisely sought to avoid opening this unique area of VA rulemaking to outside interference. Unfortunately, however, VA has full discretion now to do what they want, and this would provide an avenue when they are arbitrary and capricious in that decision.

Finally, we support the provisions for equal access to justice fees for nonattorneys.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Violante follows:]

PREPARED STATEMENT OF JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR OF THE DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee:

I am pleased to provide this Committee with the views of the Disabled American Veterans (DAV), an organization of more than one million wartime disabled veterans, on the numerous pieces of legislation pending before the Committee.

Today's agenda covers a wide range of issues important to the health and well being of our nation's sick and disabled veterans and their families. We deeply value and appreciate the advocacy this Committee has always demonstrated on behalf of the men and women who have served in America's Armed Forces. The agenda before us today abundantly demonstrates your commitment to our nation's veterans and their families.

Mr. Chairman, for the past eight decades, the DAV has been devoted to one single purpose: building better lives for our nation's disabled veterans and their families. During the past 82 years, the DAV has never wavered in its commitment to serve our nation's service-connected disabled veterans, their dependents, and survivors.

Although not on today's agenda, I find the need to briefly comment on the crisis in the Department of Veterans Affairs (VA) health care system. I realize that this issue is not new to the Committee, and that you have recognized the necessity of increasing funding for VA health care in your recent "Views and Estimates." Quite frankly, however, our combined efforts to correct this serious problem have not been successful.

Mr. Chairman, the DAV has begun an all-out campaign to guarantee that veterans who seek medical services provided by VA actually get the care they need. Changing veterans' health care from a discretionary to a mandatory program, as we are proposing, would correct the existing problem where annual funding of veterans' health programs falls far short of what is required to serve all enrolled veterans. Making veterans' health care mandatory would eliminate the year-to-year uncertainty about funding levels that has prevented the VA from adequately planning for and meeting the growing needs of veterans seeking treatment.

I hope that we can count on your support to make timely, quality VA health care a reality for our nation's sick and disabled veterans, by changing VA health care funding from a discretionary to a mandatory program.

S. 2079

This bill includes four important changes in law to make the judicial review process for veterans more efficient and effective. Our laws, like the human relationships they regulate, are complex and ever evolving. Laws governing veterans' entitlements are no different. Indeed, these laws can be quite complex, especially where they deal with cause-and-effect relationships between military service and diseases and injuries, and the quantification of disability from those diseases and injuries for compensation purposes. Thus, in veterans' benefits, as it has often been acknowledged generally, law is not an exact science. The variables of human interactions and the corresponding nuances inherent in the factual bases on which legal rights rest require the intervention of human judgment. Such judgment is, of course, not infallible. Under our legal system, we therefore view the right to appeal as an important element of fairness and insurance against injustices that result from human error. However, the appellate process also benefits the institution and decision makers whose decisions are subjected to outside scrutiny. It serves as a quality control mechanism and a higher authority on the law for agencies like VA. Appellate courts also review regulations issued by federal agencies to ensure the regulations are con-

sistent with the statutes enacted by Congress and within the authority of the issuing agency. Before I discuss section 1 of S. 2079, which deals with judicial review of VA regulations, let me turn to the provisions of the bill that affect appeals of claims decisions.

It has been said that appellate courts serve dual functions: first, they correct injustices for individuals, and, second, they decide and develop the law for uniform application across a system. Unfortunately, veterans have seen in practice an imbalance develop between these two roles of judicial review. With that imbalance, the system serves itself far better than it serves a veteran seeking a real and timely remedy for an erroneous denial of benefits. Provisions in S. 2079 will correct this imbalance and make justice for veterans the primary object of judicial review, without diminishing the secondary role of judicial review in developing legal precedent and a body of law for general application.

As I noted, where a decision requires human judgment, there is unavoidably a risk of error. Given the special purposes of benefits for veterans, the process is designed to err in favor of the veteran when an adjudicator must choose between allowance and denial in a close case. This principle is given legal effect in the statutory benefit-of-the-doubt rule. That fundamental rule in veterans' law mandates a grant of the benefit when the evidence neither proves nor disproves the claim. Section 5107 of title 38, United States Code, provides: "When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." As a consequence, VA can legally find against a veteran only when the evidence favoring the veteran is outweighed by negative evidence. This rule does more than mandate that VA give veterans the benefit of the doubt: it is the dividing line for determining whether a claim is proved or disproved in all instances.

Although this bedrock rule is the foundation for the resolution of material questions of fact in veterans' claims, the United States Court of Appeals for Veterans Claims (the "Veterans Court") does not review VA decisions to ensure the rule was properly applied. Because, by nature, veterans' appeals more often involve factual disputes than legal ones, this void in the review process leaves many veterans without any means to enforce this controlling provision of law, and they simply have no remedy for erroneous denials on this basis. The change made by section 2 of this bill will increase the chances that the truth will be discovered by a more probing appellate review than what is available under current law and practice.

Under current law, the Veterans Court upholds factual findings by VA's Board of Veterans' Appeals (BVA) unless they are "clearly erroneous." Under the meaning given that term for application in veterans' appeals, a BVA finding of fact will not be disturbed if it has a "plausible basis." That means a veteran can be deprived of benefits when there is some slight evidence that gives the government a plausible reason for denial, and it renders the benefit of the doubt rule meaningless. The Veterans Court has shown a preference for deciding finer points of law that it can elucidate in scholarly discourse or for sending cases back to BVA on procedural grounds, while avoiding, in the overwhelming majority of instances, actually deciding veterans' appeals on the merits. This prolongs an already protracted appellate process in which indigent, elderly, and disabled veterans must go through multiple reviews and wait years for a proper decision. The amendment made by section 2 will give veterans their "day in court," as envisioned in the original 1988 judicial review legislation for veterans. It will make the process exist to serve them, not the convenience of the Veterans Court and VA. Rather than a court that, in a select few cases, uses a veteran's claim as a platform for an abstract exposition of points of law, veterans deserve a court that actually decides their appeals.

Section 2 amends section 7261, of title 38, United States Code, by replacing the clearly erroneous standard of review with a requirement that the Veterans Court must reverse a decision in which the benefit of the doubt was not resolved in favor of the veteran as required by section 5107. Of course, under section 5107, the veteran still has the burden to submit evidence that is sufficient to meet his or her burden of proof under the law.

Section 2 of the bill corresponds to a longstanding DAV resolution to require judicial enforcement of the benefit-of-the-doubt rule and a recommendation by the DAV and the three other veterans' organizations that present The Independent Budget each year. Accordingly, the DAV fully supports this provision in S. 2079.

Section 3 of S. 2079 will make another important change to strengthen the appellate processes for veterans by filling a void in the jurisdiction of the United States Court of Appeals for the Federal Circuit (the "Federal Circuit"). As a matter of fairness, public policy has been to afford at least one review on appeal of points responsible for the disposition of a case. However, under the current scheme of judicial review, the Veterans Court can decide a question of law for the first time or create

a new rule of law that is not subject to review by any other court. In such instances, no remedy for error exists.

The Federal Circuit is empowered to review an "interpretation" of a statute or regulation by the Veterans Court but not an ordinary question of law that does not involve statutory or regulatory interpretation. Appellate courts fill in the gaps in statutory law and procedures with "judge-made law," that is, law established by judicial precedent rather than by statute. Unless overturned by a higher court, these rules of law are as binding as those enacted by Congress. Through judicial precedent, the Veterans Court has created several rules of law. The Veterans Court also decides ordinary questions of law unreviewable by the Federal Circuit when it applies the law to facts. Whether an event occurred or not is a question of fact, but the legal significance of a fact is a question of law. When the legal significance of a fact is not governed by an interpretation of a statute or regulation, per se, it is an ordinary question of law not reviewable by the Federal Circuit. Obviously, this limitation on Federal Circuit jurisdiction shields decisions by the Veterans Court from review in a number of instances.

As a matter of sound public policy, fairness to veterans, and the overall effectiveness of judicial review, the jurisdiction of the Federal Circuit should be expanded to include ordinary questions of law. At our most recent annual National Convention, DAV delegates again adopted a resolution calling for this change in the Federal Circuit's jurisdiction. The American Bar Association has adopted a resolution calling for this change in law, and the Federal Circuit Bar Association also supports this expansion of the Federal Circuit's jurisdiction. In addition, The Independent Budget recommends this change.

Section 1 of the bill addresses another void in the jurisdiction of the Federal Circuit. Although the Federal Circuit has jurisdiction to consider petitions challenging the legality of regulations issued by VA, section 502 of title 38, United States Code, immunizes from judicial review "an action relating to the adoption or revision of the schedule for ratings for disabilities." Formulation of criteria for evaluating disabilities involves expertise in medical and vocational fields and is more practically dealt with through rulemaking by the VA Secretary. Similarly, unlike other matters of law, this is an area generally outside the expertise of the courts. Congress therefore wisely sought to avoid opening this unique area of VA's rulemaking to outside interference. Unfortunately, without any constraints or oversight whatsoever, VA is completely free to promulgate rules for rating disabilities that are arbitrary and capricious or do not conform to the basic principles prescribed by Congress for the rating schedule. While changed circumstances will understandably sometimes warrant changes in the ratings that are less generous than previously, VA has made some revisions to the schedule that are without underlying justification. Arbitrary and capricious or unlawful changes to the rating schedule should not be immune to correction. This change in law incorporates a recommendation by The Independent Budget, and the DAV supports it.

Finally, section 4 of the bill would authorize the Veterans Court to award fees under the Equal Access to Justice Act (EAJA) for successful representation by nonattorneys in cases before that court. Under EAJA, the government must pay a party's attorney fees when a party prevails in an action in which the government's position was not substantially justified. Through EAJA, Congress shifted the costs of legal fees to the government to facilitate enforcement of rights by individuals with moderate incomes, small businesses, and nonprofit organizations. The goal is to encourage citizens to assert their legal rights against the government and discourage the government from using public resources for unwarranted defenses of its actions.

Although EAJA fees may be awarded for nonattorneys who assist or are supervised by attorneys in cases before the Veterans Court, such fees cannot be awarded for veterans' service organization representatives and other nonattorneys who are admitted to practice and who successfully represent appellants before the Veterans Court without attorney supervision. This anomaly is the result of a judicial interpretation of the term "attorney fees" as being broad enough to include fees for services of paralegals, law clerks, and other nonattorneys who assist or are supervised by lawyers but not broad enough to include the services of unsupervised nonattorneys who perform the same services as lawyers before the Veterans Court.

This puts veterans' service organization representatives at a distinct disadvantage and potentially harms the veteran or other appellant because it removes the incentive for VA to settle the meritorious cases of these appellants. VA is free to prolong the litigation in these cases even though the government's position is not substantially justified. This situation is extremely unfair. Moreover, provisions that discourage participation of qualified nonattorneys in the representation of appellants before the Veterans Court are certainly inappropriate given the added burden a high proportion of nonrepresented appellants currently places on the Court. Congress should

change the law to permit EAJA fees in cases where nonattorneys successfully represent appellants. For these reasons, The Independent Budget recommended this change in law. As mandated by DAV Resolution No. 20, the DAV fully supports section 4 of S. 2079.

The provisions of S. 2079 will greatly improve the judicial review process for veterans. The DAV believes this is one of the most important bills for veterans in the 107th Congress. We urge the Committee to promptly report this bill for consideration by the Senate.

S. 984 VETERANS' ROAD TO HEALTH CARE ACT OF 2001

This bill would authorize payment of travel expenses for treatment of nonservice-connected disabilities, at facilities not associated with the VA, if the treatment is provided upon the recommendation of VA medical personnel, and is not available at the VA facility at which such recommendation is made.

In accordance with its Constitution and Bylaws, the DAV's legislative focus is on benefits for service-connected disabled veterans, their dependents and survivors. Our legislative agenda is determined by mandates in the form of resolutions adopted by our membership.

The DAV has no mandate on this issue.

S. 1113 AND S. 2025

Both bills would increase the amount of Medal of Honor Roll special monthly pension from $600 to $1,000.

The Independent Budget for fiscal year 2003 recommended that all veterans' compensation and pension programs be maintained, protected and improved, and that annual adjustments be made to offset the rise in the cost of living. As one of the co-authors of The Independent Budget, the DAV supports the proposed increase in this important benefit.

Though similar in regard to the amount of increase, both bills include unique aspects that would further benefit Medal of Honor recipients. S. 1113 would provide for an annual increase in the amount of Medal of Honor monthly special pension by the same percentage as benefits payable under title II of the Social Security Act. Annual adjustments are necessary to offset rising costs of living, as noted in The Independent Budget. S. 2025 would make the increase in the amount of special pension effective from the date that the recipient is awarded the Medal of Honor, and also increase the criminal penalties associated with misuse or fraud relating to the Medal of Honor. Though we have no resolution concerning this issue, it is clearly offensive and shameful to fraudulently claim such an honor. The DAV would not object to heavier punishments for this crime.

Hopefully, beneficial provisions from both bills can be incorporated into final legislation. Certainly, individuals who have gone above and beyond the call of duty deserve the utmost consideration of a grateful nation.

S. 1408 VETERANS' CO-PAYMENT ADJUSTMENT ACT

This bill would standardize the income threshold for co-payment for outpatient medications with the income threshold for inability to defray necessary expenses of care. We understand that section 3 of the bill is moot as a result of the changes made by VA establishing a three-tiered co-payment structure for outpatient medical care.

DAV is opposed to co-payments for veterans' medical care and prescriptions. Unfortunately, the VA Secretary elected to increase medication co-payments from $2 to $7 for each 30-day supply of medication, despite strong objection from the veterans' community. DAV Resolution No. 218 supports the repeal of co-payments for medical care and prescriptions provided by the VA. We will continue to voice our objection to co-payments on the basis that they fundamentally contradict the spirit and principle of veterans' benefits. As the beneficiaries of veterans' service and sacrifice, the citizens of our grateful nation want our government to fully honor our moral obligation to care for veterans and generously provide them benefits and health care entirely free of charge.

The law authorizing medication co-payments is due to expire on September 30, 2002. We have urged members of Congress to oppose extending medication co-payment provisions beyond the sunset date. Our hope is that this legislation (S. 1408) will become moot if the law on co-payments is allowed to expire on September 30, 2002. However, if the sunset date were extended, there would at least be a provision in place that would be beneficial to some veterans. Therefore, we are not opposed to the Committee's favorable consideration of this measure.

S. 1517 MONTGOMERY GI BILL (MGIB) IMPROVEMENTS ACT OF 2001

This bill would eliminate the $1,200 pay reduction currently required of servicemembers during their first 12 months of active duty as a precondition to eligibility for MGIB benefits. Servicemembers' lowest earning potential is during their initial year of service. Therefore, many cannot afford to further lower their monthly income by $100 and they opt against enrolling in the valuable MGIB. Elimination of the $1,200 reduction would provide a greater recruitment incentive and enable veterans to attain better economic status through higher education and training. The national economy is stimulated as a result of the thousands who utilize the GI Bill. The DAV does not oppose this provision.

This bill would also expand the period veterans are eligible to use their MGIB benefits from 10 to 20 years after discharge in recognition of today's need for continuing education. Also, many newly discharged veterans have family and financial obligations that hinder educational enrollment. Extension of the eligibility period would allow them to seek higher education in later years that are more conducive to study. The DAV does not oppose this provision.

Additionally, this legislation would allow servicemembers with at least 15 years of active duty to transfer their MGIB entitlement to their spouses or dependent children. We have no position on this provision.

Lastly, this bill would enable members of the Selected Reserve who are called to active duty to be eligible for increased MGIB benefits if they serve in such an operation for more than one year. The DAV would not oppose enactment of this legislation.

S. 1561, S. 2132, AND S. 2187

S. 1561 would strengthen the preparedness of health care providers within the VA and community hospitals to respond to bioterrorism.

S. 2132 would provide for the establishment of medical emergency preparedness centers in the Veterans Health Administration, and provide for the enhancement of the medical research activities of the VA. This measure would establish at least four medical emergency preparedness centers in VA to carry out research on and develop methods of detection, diagnosis, vaccination, protection, and treatment for chemical, biological, radiological, and incendiary or other explosive devices that pose a threat to public health and safety. It also seeks to provide, at the discretion of the Secretary, education, training, and advice to health care professionals throughout the United States, and to provide contingent rapid response laboratory assistance to local health care authorities in the event of a national emergency.

S. 2187, the Department of Veterans Affairs Emergency Medical Care Act of 2002, would authorize the Secretary of Veterans Affairs to furnish health care during a major disaster or medical emergency.

DAV does not have a resolution from our membership on any of these measures; however, their purposes appear beneficial. We do not oppose favorable consideration of S. 1561, S. 2132, and S. 2187 by the Committee. These bills would allow VA to enhance its support role in federal security and homeland emergency efforts. VA's extensive health care system, graduate medical education and research program, and unique specialized services make VA an essential asset in responding to potential chemical, biological, and radiological attacks. Clearly, VA's foremost responsibility is its primary mission of providing medical care to our nation's veterans; however, VA is a unique national resource, and all Americans benefit from its exceptional health-related training and research programs.

The VA's Veterans Health Administration (VHA) is the nation's largest direct provider of health care services, with over 1,300 facilities, including hospitals, ambulatory care and community-based outpatient clinics, counseling centers, nursing homes, and domiciliary facilities. VA's primary mission is to provide health care to our nation's veterans. Its second mission is to provide education and training for health care personnel. VA trains approximately 85,000 health care professionals annually and is affiliated with nearly 1,400 medical and other schools. Its third mission is to conduct medical research. VA's fourth mission, defined in Public Law 97–174, the Veterans Administration and Department of Defense (DoD) Health Resources Sharing Act, enacted in 1982, provides that VA is the principal medical care backup for military health care "[d]uring and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict[.]"

Currently, multiple federal agencies, including VA, are involved in emergency response for potential terrorist acts and other domestic disaster or emergency situations. State and local agencies have the primary responsibility for managing medical response during catastrophic events. VA's role is to augment the efforts of state and

local authorities should such events occur. As part of its emergency preparedness responsibilities, VA is charged with planning for emergency health care service for VA beneficiaries, active duty personnel, and, as resources permit, to civilians in communities affected by national security emergencies. In the past, VA has been there in times of crisis, providing emergency relief following earthquakes, hurricanes, and flood disasters. Following the terrorist attacks of September 11, VA stood ready to respond. Although casualties were minimal, VA cared for patients, deployed staff, supplies, and made its inventory readily available. In New York, VA assisted emergency workers and the National Guard to help them carry out their duties in the immediate aftermath of the terrorist attacks. Staff from VA's National Center for Posttraumatic Stress Disorder (PTSD) began to assist DoD in its relief efforts at the Pentagon. In the months following the attacks, VA also broadcast the DoD sponsored series on "Medical Management of Biological and Chemical Casualties" and "Medical Response to Chemical and Biological Agent Exposure" throughout its satellite Network.

VA plays a key-supporting role as part of the Federal Response Plan and the National Disaster Medical System. VA's Medical Emergency Radiological Response Team is trained to respond to radiological emergencies. VHA also supports the Public Health Service and Health and Human Service's office of Emergency Preparedness to ensure that adequate stockpiles of antidotes and other necessary pharmaceuticals are maintained nationwide in case of a catastrophic event such as the use of weapons of mass destruction. Additionally, VA, well known as a leading authority in treating PTSD, makes available its highly trained mental health staff to assist victims traumatized by large-scale disasters.

The terrorist attacks in New York, Washington, D.C., and Pennsylvania made us feel vulnerable and keenly aware that attacks could occur anywhere in the United States at any time. The immediate establishment of the Office of Homeland Defense by the President was reflective of the urgency and serious threat of terrorism here at home and our resolve to be prepared to handle the consequences of potential future attacks. The tragic deaths from anthrax fueled fears of other toxic agents being let loose on unsuspecting citizens. As a nation, we resolved to face these fears and to address new potential threats with concrete solutions. The introduction of these measures is reflective of that goal. Clearly, VA has a multitude of resources and expertise that could be utilized should we experience a chemical, biological, or radiological attack. In past conflicts, and, at times, by our own government, veterans have experienced exposure to a variety of toxic substances during military service, prompting VA to develop a core of specialized medical programs and treatments. VA has expertise in areas such as radiation exposure, exposure to toxic chemical, biological, and environmental agents, and recently developed two new centers for the Study of War-Related Illnesses. VA also has unique expertise in diagnosing and treating stress-related disorders such as PTSD. Clearly, VA could contribute greatly to the advancement of knowledge and treatment of patients with exposure to chemical, biological, and radiological agents.

However, if we expect VA to address these new threats—and address them promptly and effectively—VA must be provided with sufficient funding to correct its current deficiencies and carry out all its missions. VA is presently struggling to carry out its primary mission of providing timely, quality health care to our nation's veterans. As this Committee is aware, increasing numbers of veterans are seeking care from VA; however, medical care funding has not kept pace with inflation and increasing enrollment, which has placed significant financial stress on the VA system and caused longer waiting times for patient care. Continued budget shortfalls and open enrollment have stretched VA to its limits, making it extremely difficult for VA to provide the timely, quality health care services veterans, especially service-connected disabled veterans, deserve.

VA and the General Accounting Office (GAO) provided testimony before the House Veterans' Affairs Committee on October 15, 2001, and discussed VA's ability to respond to DoD contingencies and national emergencies. Clearly, VA will play a vital role in helping our nation meet its new challenges, and a high degree of readiness is essential in the event of additional terrorist acts on our homeland. Some of the deficiencies and opportunities VA identified to improve its ability to carry out all its missions included substantial upgrades to personal protection gear, equipment, and training to properly respond to a chemical attack. Secondly, VA reported it would be very difficult to treat veterans, military personnel, and civilians at the same time, should a mass-casualty event occur. Thirdly, VA noted that significant staffing shortages could result if there was a call-up of Reserve or National Guard units. Finally, VA reported that long-term needs for PTSD counseling following a catastrophic event might impact on its ability to treat veterans. Despite these challenges, VA confirmed its intent to meet its critical emergency response missions.

GAO confirmed in its testimony that VA's role as part of the government's response for disasters has grown with the reduction of medical capacity in the Public Health Service and military medical facilities. The testimony addressed VA's strengths and limitations in its emergency response capabilities and relative to planning for homeland security, and noted that VA hospitals do not have the capability to process and treat mass casualties resulting from weapons of mass destruction. It also noted that VA hospitals are better prepared for treating injuries resulting from chemical exposure than those resulting from biological agents or radiological material. Notably, it pointed out that VA hospitals, like private sector community hospitals, lack decontamination equipment and supplies for treating mass casualties. Finally, GAO stated that, "*[c]urrently, VA's budget authority does not include funds to address these shortcomings*." (Emphasis added.)

We agree with GAO's concluding observations that VA, in its supporting role, makes a significant contribution to the emergency preparedness response activities carried out by the lead federal agencies. We also concur that enhancing VA's role may be beneficial; however, the potential impact on VA being able to carry out all its health care missions if suggested enhancements are made, is unclear, as is the impact on the VA medical care budget.

VA is clearly in a unique position to support other lead agencies in managing large-scale disasters. S. 1561, S. 2187, and S. 2132 would certainly enhance VA's capabilities and contributions in this regard, but without sufficient funding to meet its primary mission, it is questionable if additional obligations should be put upon VA to carry out these added responsibilities.

The Independent Budget has recommended a funding level of $250 million for VA's fourth mission.

S. 1576

This bill would extend to December 31, 2011, eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War.

A range of illnesses of an unknown etiology struck many servicemembers returning from the Gulf War in 1991. It is suspected that the illnesses are related to variable exposures, including smoke from oil field fires and other petroleum agents, depleted uranium, chemical and biological elements, desert parasites, vaccines, chemoprophylactic agents, and vehicle paints. Investigations by Congress, the DoD, VA and the Institute of Medicine have thus far failed to identify the source or sources of these ailments.

Gulf war veterans suffering from unexplained illnesses should continue to get the care they need. The DAV strongly urges that Gulf War veterans receive priority medical treatment for ailments that may be associated with their service in the Persian Gulf. The DAV fully supports this bill.

S. 1680

This bill would extend civil relief provided under the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) to National Guard personnel mobilized by state governors in support of Operation Enduring Freedom, or who are otherwise called up at the request of the President.

Specifically, this bill would limit interest rates on debt incurred prior to mobilization, to 6 percent annually and protect against the following:

- eviction from rental or mortgaged property;
- cancellation of life insurance;
- the sale of property to pay taxes; and
- the binding terms of leases.

Currently the SSCRA only applies to National Guard personnel mobilized directly by the President of the United States, and does not protect those mobilized by state governors at the request of the President, as is the case with those National Guard now protecting our airports.

National Guard forces have had increased responsibilities since the tragic events of September 11, 2001. Their mission is vital to our national security. Their service and sacrifices must be honored.

Although we have no resolution on this issue, it is a logical and equitable improvement to the SSCRA. The DAV would not oppose the enactment of this legislation.

S. 1905

Section 101 of S. 1905 would authorize care for newborn children of enrolled women veterans following delivery. Women Veteran Coordinators have complained that it is very difficult to secure a contract for care for a woman veteran for the

delivery of a baby without securing a contract for initial post-delivery newborn care. Private hospitals are reluctant to accept a sole contract for care for the mother and risk financial responsibility for the care of the newborn infant following delivery. The promise of comprehensive health care services includes prenatal care and delivery. Health care professionals consider the initial newborn care immediately following delivery as part and parcel of the delivery itself. This legislation would authorize VA to pay for the initial care of the newborn infant for 14 days after the date of birth or until the mother is discharged from the hospital, which ever is the shorter period.

DAV has no resolution from our membership on this issue; however, its purpose is beneficial. We have no objection to the Committee's favorable consideration of this section of the measure.

Section 102 would authorize outpatient dental care for all former prisoners of war (POWs), eliminating the requirement of at least 90 days internment for eligibility for such care. DAV is fully supportive of this provision given the extreme hardships experienced by all American POWs, regardless of their length of internment. We recognize that oral health is integral to the general health and well-being of a patient and is part of comprehensive health care. DAV Resolution No. 235 supports legislation to provide outpatient dental care to all enrolled veterans.

Section 103 would authorize pay comparability for the Director of Nursing Service. DAV supports this provision of the bill in keeping with DAV Resolution No. 235, which seeks the enactment of legislation providing for competitive salary and pay levels for VA physicians, pharmacists, dentists, and nurses.

DAV has no mandate on the provisions contained in Sections 201–203 and Sections 301–304; however, we are not opposed to their favorable consideration by this Committee.

S. 2003 would clarify the applicability of the prohibition on assignment of veterans' benefits to agreements regarding future receipt of VA benefits.

S. 2003

At our National Convention in Orlando, Florida, August 21–25, 1999, our delegates passed DAV Resolution No. 203, urging the VA, through its Inspector General, to investigate the practices of advance funding or "factoring" agreements to determine whether they were a violation of law. This bill would clarify the prohibition on assignment of veterans' benefits.

DAV supports this measure.

S. 2043

S. 2043 would extend by five years the provision to provide non-institutional extended care services and required nursing home care. With enactment of the Veterans Millennium Health Care and Benefits Act, the term "medical services" specifically included non-institutional extended care services. Additionally, it authorized nursing home care for any veteran in need of such care for a service-connected disability and to any veteran in need of such care who has a service-connected disability rated 70 percent or more. However, both these provisions are set to expire December 31, 2003. This measure would extend the sunset date for provisions to include non-institutional extended care services under the term "medical services" and required nursing home care until December 31, 2008. It also extends the date of the required report to Congress on these provisions to January 1, 2008.

DAV supports this measure. VA faces significant challenges in meeting the needs of an increasingly larger elderly veterans population. In providing nursing home care to eligible veterans, VA clearly needs to have alternative options to traditional institutional extended care available. One such initiative, supported by The Independent Budget, is assisted living. This approach combines housing, support services, personal care assistance, and health care for patients who do not require 24-hour medical supervision. This alternative to institutional nursing home care is less expensive and provides an important option for veterans and their families based on the individual medical needs of the patient.

S. 2044

This bill would increase funding and improve the specialized mental health services provided to veterans under the Veterans Millennium Health Care and Benefits Act, Public Law 106–117.

DAV fully supports this measure. As part of The Independent Budget, DAV has urged Congress to improve specialized mental health services, particularly programs for the treatment of post-traumatic stress disorder and substance abuse. Given the high proportion of VA patients who need treatment for mental health problems and

the long-documented need to expand VA's mental health service capacity, we applaud the Chairman for the introduction of S. 2044. The treatment and rehabilitation of veterans with mental disorders is among the highest priorities for the Veterans Health Administration. This bill will begin to address necessary programmatic expansion and funding needs of these important mental health programs.

S. 2060

This bill would rename the VA Regional Office in St. Petersburg, Florida, after Franklin D. Miller.

The DAV national organization has no position on this measure.

S. 2073

This bill would provide for the retroactive entitlement of Ed W. Freeman to the Medal of Honor special pension.

DAV has no position on this bill. We would not be opposed to its favorable consideration by this Committee, however.

S. 2074

S. 2074 would increase the rates of disability compensation, DIC, and the clothing allowance by the percent of annual increase in the cost of living, with rounding down of the adjusted rates to the next lower whole dollar amount. These increase would be effective December 1, 2002.

It is important for Congress to adjust these benefit rates regularly to avoid the decrease in their value that would otherwise occur by reason of rising costs of goods and services.

The DAV supports this bill. However, we continue to oppose rounding down of compensation increases, and we urge this Committee to reject recommendations to extend this cost-savings provision beyond its current sunset date.

S. 2186

This bill would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement functions.

DAV has no position on this measure. We would, however, recommend that Congress provide sufficient additional funding for this new position and for any additional staff that will be necessary to carry out the duties of the new office should this new position be authorized by Congress.

S. 2205

Section 2 of S. 2205 clarifies the terms for entitlement to special monthly compensation for women veterans who have service-connected mastectomies. DAV fully supports this provision of the bill and we are extremely grateful for the Chairman's initiative to right this wrong.

We believe that VA took a very narrow view of what constitutes the anatomical loss of a breast for the purposes of special monthly compensation. VA argued that anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined in 38 C.F.R. 4.116, diagnostic code 7626, note (2001) radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

VA went on to argue, wide local excision would not be equivalent to anatomical loss of a breast because it involves less than complete removal of the breast tissue and there is no standard or feasible way to define such partial removal of breast tissue. VA's attempt to conveniently qualify the statutory term "anatomical loss" as necessarily meaning the loss of all breast tissue is not justified by the statutory language itself nor supported by the meaning of the term as applied by VA to other truly analogous conditions. The term anatomical loss must be reasonably read to mean the substantial loss of the bodily part, as it is elsewhere in VA regulations. For example, loss of use of a testicle will be established when the "diameters of the affected testicle are reduced to one-third of the corresponding diameters of the paired normal testicle," or when the "diameters of the affected testicle are reduced to one-half or less of the corresponding normal testicle and there is alteration of consistency so that the affected testicle is considerably harder or softer than the corresponding normal testicle." 38 C.F.R. § 3.350(a)(1). DAV provided several other examples in its formal response to the proposed rule to implement statutory provisions authorizing special monthly compensation for service-connected loss of a female

breast to demonstrate that VA has not approached its rulemaking fairly and objectively on this issue.

We recommended, that because loss of half or more of a female breast would cause such deformity and loss of bodily integrity as to have essentially the same practical effect as a total mastectomy, that VA should revise its definition to provide that anatomical loss will be found when there is loss of half or more of the breast. Unfortunately, VA ignored our recommendation, and a legislative remedy is necessary to clarify congressional intent on the award of special monthly compensation for service-connected loss of a breast. Again, we thank the Chairman for his efforts to correct this issue.

Section 3 would make permanent the authority for counseling and treatment for sexual trauma. A VA study, designed to asses the health status of women veterans who use VA ambulatory services, revealed there is a high prevalence of sexual assault and harassment experiences reported among women veterans accessing VA services and that active duty military personnel report rates of sexual assault higher than comparable civilian samples. We testified previously on this issue and, because of these disturbing findings, DAV recommended that the VA Sexual Trauma Counseling Program be made permanent. We support this provision in the legislation and are hopeful the Committee will act favorably upon it.

Section 4 would require that VA submit a report to the Committees on Veterans' Affairs of the Senate and House of Representatives on the furnishing of health care to women veterans in the VA health care system to include a list of Women Veterans' Comprehensive Health Centers, staffing levels at such centers, the type of services furnished, and the number of women provided care. It would also require VA to provide the number of sites that furnish care through a full-service women's primary health care team, including information about staffing levels, the type of services provided and the number of women seen in those care settings. Finally, the report would require specific information about women veteran coordinators and the number of hours each dedicates to that position.

We support this provision of the bill. DAV recognizes the importance of having access to this type of information to track the status of programs and services available to women veterans through the VA Women Veterans Health Program.

S. 2209 ROBERT CAREY SERVICE DISABLED VETERANS' INSURANCE (SDVI) ACT OF 2002

This measure would create a new life insurance program for service disabled veterans, offering as much as $50,000 in coverage at a price comparable to that of commercial coverage for healthy persons.

The current SDVI program offers only a meager level of coverage that pays little more than the cost of today's funeral expenses. Nearly half of all SDVI beneficiaries rely on VA compensation as their sole source of income and are unable to purchase additional coverage.

Most disabled veterans have levels of coverage far below the amount recommended by financial planners. This bill would begin to restore the effectiveness of SDVI. The DAV fully supports this provision.

S. 2209 would also fulfill a recommendation in The Independent Budget to base SDVI premiums on more current mortality tables. The intent of the SDVI program was to make life insurance available to disabled veterans at rates comparable to rates offered to healthy persons by commercial insurers. Because today's SDVI premium rates are still based on life expectancy from 1941 mortality tables, SDVI is now more costly than commercial policies. These changes will enable the SDVI program to achieve its intended purpose. The DAV fully supports this provision.

S. 2227

This measure would clarify the effective date of the modification of treatment for retirement annuity purposes of part-time service before April 7, 1986, of certain VA health care professionals.

DAV has no position on this bill; however, we would not be opposed to its favorable consideration by this Committee to ensure that the intent of its prior legislation is fully complied with by the Office of Personnel Management.

S. 2228

This bill would authorize the Secretary of Veterans Affairs to operate up to 15 centers for mental illness research, education, and clinical activities. The purpose of these centers is the improvement of health care services and related counseling services for veterans suffering from mental illness through research, providing specific models for treatment purposes, education and training of health care professionals, and the development and implementation of innovative activities.

The DAV supports this measure to increase the number of these centers from 5 to 15.

S. 2229

This measure would authorize a cost-of-living increase in rates of disability compensation and dependency and indemnity compensation (DIC). It would also revise the requirements for maintaining levels of extended care services for veterans.

S. 2229 would increase the rates of disability compensation, DIC, and the clothing allowance by the percent of annual increase in the cost of living, with rounding down of the adjusted rates to the next lower whole dollar amount. These increases would be effective December 1, 2002.

As we noted with respect to S. 2074, it is important for Congress to adjust these benefit rates regularly to avoid the decrease in their value that would otherwise occur by reason of rising costs of goods and services.

The DAV supports the COLA provision of this bill, which is the same as S. 2074. However, we continue to oppose rounding down of compensation increases, and we urge this committee to reject recommendations to extend this cost-savings provision beyond its current sunset date.

DAV is concerned that Title II of S. 2229 would greatly decrease the VA's capacity to provide nursing home care to veterans in homes under VA's direct jurisdiction. Accordingly, we would be opposed to any change in the method by which VA calculates the number of veterans receiving extended care services pursuant to section 1710B(b) of title 38, United States Code.

S. 2230

This measure would give VA permanent authority to guarantee Adjustable Rate Mortgage (ARM) loans. The legislation would also give VA authority to guarantee a new type of ARM financing called a "hybrid."

Hybrid ARM loans provide a fixed rate of interest during the first three to ten years of the loan, and an annual interest rate adjustment thereafter. Both conventional ARMs and hybrid ARMs would provide veterans with financing options that are currently available to non-veterans under federal Housing Administration programs.

The DAV has no resolution concerning this issue, but we would not oppose the addition of a hybrid ARM option to the VA loan guarantee program.

S. 2231 SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE ADJUSTMENT ACT OF 2002

This bill would increase educational assistance for survivors and dependents of servicemembers from $760 to $985 per month, reduce the duration of educational assistance from 45 to 36 months, and increase funding to State Approving Agencies (SAAs) from $14 million to $18 million.

Many spouses and children of severely disabled veterans would be unable to afford tuition at an institution of higher learning or pursue a vocational endeavor because of the reduced earning ability of such veterans. The increase in Dependents' Educational Assistance (DEA) provided in this bill enables them to meet the cost of tuition and associated expenses of most 4-year colleges. The DAV supports this provision.

This legislation would also provide an increase of $4 million in additional funds to SAAs. Currently funded at $14 million annually, SAAs have been given additional responsibilities by Congress. Additional funds are necessary to fulfill these new responsibilities. SAAs determine which educational institutions and programs are approved for use of VA educational benefits. SAAs are instrumental in assuring the success of quality educational programs. The DAV has no opposition to this provision.

In an effort to make DEA comparable to the Montgomery GI Bill, this bill would reduce the period of eligibility for DEA from 45 to 36 months. We do not support this provision.

S. 2237

This bill removes the inequity in compensating veterans for service-connected hearing loss by eliminating the requirement that there by "total" deafness in both the service-connected and the nonservice-connected ear before VA could apply special consideration when evaluating loss of paired organs or extremities.

Another provision of this bill would require independent scientific review of evidence on occupational hearing loss, particularly acoustic trauma associated with

military service. It would require VA to determine whether the evidence warrants a presumption of service connection for hearing loss or tinnitus as a result of certain military occupations. This corresponds to a recommendation in The Independent Budget that Congress enact a presumption of service connection for hearing loss suffered by combat veterans and those that had military duties involving high levels of noise exposure.

DAV supports the provisions of this bill.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you may have.

Chairman ROCKEFELLER. Thank you very much.

Mr. Fischl?

STATEMENT OF JAMES R. FISCHL, DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. FISCHL. Thank you, Mr. Chairman. The American Legion appreciates the opportunity to present its views concerning the many legislative proposals before us today. While all of them are important, I will only address a few of them because of the time constraints.

With regard to S. 2079, it is a significant milestone in the claims adjudication process. It was not until the creation of the Court of Appeals for Veterans' Claims in 1988 that VA claimants had anywhere to turn if their claim were denied at the Board of Veterans' Appeals.

The American Legion believes that this legislation will provide for more timely, easier and a more just system for claimants, which is more in keeping with the nonadversarial structure of the adjudication process. The most important element of this bill is section 2, which protects the nonadversarial claims adjudication process by eliminating the clearly erroneous standard of reversal for factual findings and inserting the preponderance of the evidence standard of reversal.

Because the court strictly interpreted the clearly erroneous standard, it is the American Legion's experience that, in many instances, the VA regional office and the BVA have not properly applied the benefit of the doubt rule. Section 2 of this bill remedies this problem. The court will now have to reverse BVA factual findings if the finding was not reasonably supported by a preponderance of the evidence. The ultimate result of this amendment will be that many more deserving veterans will obtain their justly earned benefits at a much earlier time.

S. 2237, Veterans' Hearing Loss Compensation Act of 2002. This proposal would make it less of a burden for veterans to obtain service connection and be compensated for hearing loss related to their service. It also will require VA to assess the effects of acoustic trauma associated with various military occupational specialties. This is long overdue, and we applaud this initiative. However, the American Legion would like to see the language of the bill amended to include noise-induced hearing loss, as well as the proposed acoustic trauma.

According to the Merck Manual, which is the oldest continuously published medical textbook in the English language, any source of intense noise, such as internal combustion engines, heavy machinery, gunfire or aircraft may damage the inner ear. The onset of

hearing loss related to noise exposure is often not immediate. The fact that hearing loss is not noted on separation does not mean that subsequent hearing loss is not related to exposure to loud noises while on active duty.

The American Legion is concerned that the exclusion of noise-induced hearing loss may deprive many veterans of the benefit of the presumption contemplated by this legislation.

Mr. Chairman, you raised the issue of how would we determine which hearing loss was service connected and which was not because there are many intervening causes that could be attributed to the hearing loss. The American Legion would suggest that a competent medical opinion could address the probability that the exposure to noise while on active duty could be related to the current hearing loss.

S. 1576 would extend Persian Gulf War veterans eligibility for VA health care through December 31, 2011. PL 107–135 extended health care benefits for Persian Gulf veterans through December 31, 2002. Thus, the language of S. 1576 should be amended to change the terminal eligibility to December 1, 2012.

S. 1517, the Montgomery GI Bill Improvement Act of 2001 would provide many sought-after enhancements to the Montgomery GI Bill program. We certainly applaud the elimination of the $1,200 deduction. We are currently evaluating our position on the provision of transferring of entitlement to educational assistance by members with 15 years of active duty service. We do not support extending the time limitation for use of Montgomery GI Bill eligibility and entitlement from 10 to 20 years. We do, however, recommend that the VA, on a case-by-case basis, be able to extend the limiting period for eligible veterans, and we would suggest that this not be limited to just a severe medical condition, where the veteran was able to document that he was not able to attend school, that it should include provisions such as a veteran that lost employment and had to now seek a new career field, that that veteran, perhaps it be 15 years down the road, that he be able to use his remaining entitlement to help procure a new career field.

I see my time has ended, so I will yield to the red light, and our testimony is of record.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fischl follows:]

PREPARED STATEMENT OF JAMES R. FISCHL, DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee:

The American Legion appreciates the opportunity to discuss the several bills scheduled for consideration today.

The American Legion would like to commend you, Mr. Chairman, for scheduling this hearing on a variety of legislative proposals that are intended to improve the delivery of healthcare benefits and services to this nation's veterans; provide for increases in compensation rates; increase the special pension for Medal of Honor recipients; and improve education assistance under Chapters 30 and 35, title 38, United States Code (USC); and for other purposes.

S. 984, the "Veterans' Road to Health Care Act of 2001," would amend title 38, USC, to provide for payments under the Beneficiary Travel Program in connection with care for a veteran's nonservice-connected disability at a non-VA facility, if such care is recommended by VA medical personnel and such care is not available at the VA facility making the recommendation. This bill would also raise the beneficiary

travel payment of $0.11 to match the Federal employees travel reimbursement rate, which is currently $0.365.

The American Legion, by resolution, supports an increase in veterans' beneficiary travel pay. Payments to disabled veterans, under this program, have not been increased since 1978. In part, VA was reluctant to increase this payment, because the necessary funding would come from the medical care appropriation. An increase in beneficiary travel potentially reduces much needed funding for direct patient care; however, the failure to provide any increase over such an extended period of time has meant that veterans are not reasonably reimbursed for costs incurred to visit a VA medical center for service-connected or other authorized care and treatment. The lack of a consistent and reliable mechanism to periodically adjust the per mile authorization for beneficiary travel creates an injustice and an unfair economic burden to many veterans.

The American Legion fully supports an increase, but strongly recommends this increase must be accompanied by commensurate appropriated funds, so that a gain in beneficiary travel does not result in a loss of medical treatment.

The bill would also authorize payment for travel to a non-Department facility for the treatment of a nonservice-connected condition based upon recommendation by VA medical personnel, when the treatment is not available at the VA facility where the recommendation is made. The American Legion is concerned about this proposal, because it would establish payment for treatment outside of the Veterans Health Administration (VHA) system, while there is no current mechanism to provide payment for such care within the system. Often veterans encounter hardship when they are referred to another VA facility for care not available at their local Veterans Affairs Medical Center (VAMC) or health care system.

It is often economically sound—cheaper—for VA to provide services "within house" even though it means sending veterans quite some distance from one VA facility to another. This same economy does not necessarily apply to veterans, who at times must get to these facilities at their own expense. As an example, for years The American Legion heard complaints from veterans in Las Vegas, NV about the time and expense they had to invest in order to go to and from Las Vegas to southern California for specialized services. Veterans in West Texas voiced similar concerns about having to go to Albuquerque, NM. Much has been done in both places to improve the situation and make services available locally. Nevertheless, veterans must meet the basic eligibility criteria to receive beneficiary travel pay. This does not cover many veterans when they are referred or must travel to another VAMC for the outpatient treatment of a non-service-connected condition, even if the local VAMC cannot provide the needed care or treatment. .

The American Legion would not support paying beneficiary travel for veterans to travel to a non-VA facility until it is first available for veterans to travel within the VHA system based on the same criteria—VA medical recommendation and lack of service at the originating VA point of treatment.

S. 1113 would amend title 38, USC, section 1562, to increase the amount of special pension for Medal of Honor recipients from $600 to $1000 a month. It would also provide for an annual adjustment in this rate indexed to the cost-of-living adjustment in Social Security benefits.

The American Legion supports this special recognition program for those 149 living veterans who have earned this nation's highest military award for their bravery and self-sacrifice. The special pension awarded these individuals was last adjusted in 1998. The American Legion believes it is timely and appropriate that this benefit be substantially increased and that provision be made for an annual cost-of-living adjustment in the monthly rate of pension payable.

S. 1408, the "Veterans' Co-Payment Adjustment Act," would standardize VA's income threshold for co-payment for outpatient medications with the current VA means test threshold for inability to defray the necessary expenses of care.

This legislation would exempt certain veterans from co-payments for needed prescription drugs by standardizing the income thresholds for outpatient medications and the inability to defray the necessary expense of care (the Means Test). The American Legion has heard—loud and clear—the negative reactions of veterans to the recent medication co-payment increase. At the time the regulation was proposed, The American Legion voiced its opposition to the rate of the increase and suggested alternative actions. Clearly, the sizeable percent of this increase has presented difficulties for certain veterans, especially those with low fixed incomes and those who are barely above the threshold for exemption—the pension rate of $9,556—as well as those veterans who require multiple or maintenance medications. Veterans also find the complex and arcane rules that govern eligibility difficult to follow. Standardizing the threshold, as proposed, would help to simplify the co-payment criteria,

but most importantly, it would assist those least able to afford the increase in their prescription co-payments.

The American Legion also believes it is equally important to look at the present co-payment charge for some inexpensive over-the-counter medications. A veteran taking a daily aspirin as part of maintenance treatment for a coronary disease is required to pay $7 for a 30-day supply. That is $21.00 for less than a 100 pills, when anyone can go to their local pharmacy and buy a bottle of that amount or more for a couple of dollars. This is an obvious oversight in the current regulation that needs to be examined and rectified. However, the co-payment system must have a common sense logic that does not discourage compliance or force veterans to go elsewhere for their medication by overcharging them due to insensitivity or inflexibility.

Section 3 would limit the prescription co-payment increase pending a reduction of the outpatient visit co-payment. The intent of this section, basically, has been met with the reduction in the cost of a primary care outpatient visit from $50.20 to $15.00.

S. 1517, the "Montgomery GI Bill Improvement Act of 2001," would provide a number of enhancements to the Montgomery GI Bill (MGIB) program.

Section 2 of the legislation proposes to repeal the pay reduction and election not to enroll in the basic MGIB educational assistance program. The American Legion agrees that the current required military payroll deduction of $1200 to enroll in the MGIB should be terminated. We believe that veterans earned this benefit through the risks, sacrifices, and responsibilities associated with military service. Eliminating the "buy-in" provision would automatically enroll veterans in the program. They would then become eligible to receive the earned benefit through meeting the terms of their enlistment contract and by receiving an honorable discharge.

Section 3 would provide for the transfer of entitlement to educational assistance by members with 15 years of active duty service. The intent of MGIB, and its predecessors, has been primarily to assist veterans in the process of readjustment to civilian life after military service. This involves training, retraining, and higher education as means of helping these veterans get on with their lives and careers. It is an individual, earned benefit. Currently, there are provisions to extend educational benefits to family members in Chapter 35, USC. The American Legion is currently evaluating its position on this provision.

Section 4 would extend the time limitation for use of MGIB eligibility and entitlement from 10 to 20 years. The American Legion does not support this proposal. In establishing the several previous GI Bill education programs, its position has been that an individual should have a reasonable period of time after leaving service within which to make their adjustment to civilian life. The American Legion believes the current 10-year delimiting period is a reasonable period of entitlement; however, we would recommend that VA have the authority to waive the delimiting period for any eligible veteran on a case-by-case basis. The American Legion believes the MGIB program should remain a key part of VA's readjustment programs, rather than becoming some type of general educational benefit.

Section 5 of the bill would provide MGIB benefits for members of the Selected Reserve called to active duty for more than one year for a contingency operation. The American Legion supports efforts to increase educational assistance benefits for Selected Reserves, under Section 1610 of title 10, United States Code. Currently, the All-Volunteer military relies on the National Guard and Reserves to meet its force requirement. Individuals in the Selected Reserves can be activated for duty at a moment's notice. Oftentimes, these units reinforce the active duty forces at home and around the world, as is the case in Operation Enduring Freedom. The American Legion believes those members of the National Guard and the Reserves should receive a substantial increase in MGIB benefits.

However, we do not support the one-year service entitlement provision. We believe this requirement is excessive. Generally, National Guard and Reserve units are activated for periods of six to eight months at a time every eighteen months. In recognition of their service and sacrifices, The American Legion urges Congress to consider improving the quality of life benefits, such as educational benefits, as well as allowances and privileges to the National Guard and Reserves, so as to more closely approximate those provide for their counterparts in the active force.

S. 1561 would authorize the appropriation each fiscal year of such sums as may be necessary to implement training programs and cooperative efforts within the VA healthcare system and in the community to respond to threats of bioterrorism.

The American Legion concurs with this effort to strengthen the preparedness of health care providers within VA and community hospitals to respond to bioterrorism. In the wake of September 11, 2001, came a renewed effort and vital interest in how prepared the nation is to react and respond to national emergencies. The American Legion has testified in the past as to its support of such initiatives and

to the fact that the VHA and VA already possess many of the resources needed to play a key role in the event of a national emergency. The American Legion believes VA should have a major role in Homeland Security, especially in the area of bioterrorism and mass casualties.

S. 1576 would extend Persian Gulf War veterans' eligibility for VA healthcare through December 31, 2011.

As stated in Section 1, the intent of the legislation is to provide a 10-year extension of eligibility for health care of veterans who served in Southwest Asia during the Gulf War. However, subsequent to its introduction, Public Law (P.L.) 107–135 was signed by the President, extending the eligibility of Persian Gulf veterans for VA healthcare for one year (through December 31, 2002). Thus, the language of S.1576, as introduced, does not reflect this change in the law and only extends the eligibility to December 31, 2011. In keeping with the original intent of this bill, we believe it should be amended to change the terminal eligibility date to December 31, 2012.

Given the many unanswered questions surrounding the unexplained multi-symptom illnesses plaguing many Gulf War veterans and the inconclusive nature of research to date, The American Legion strongly supports a 10-year extension of eligibility for health care for these veterans.

S. 1680 would amend the "Soldiers' and Sailors' Civil Relief Act of 1940" to provide that duty in the National Guard mobilized by a state in support of Operation Enduring Freedom or otherwise at the request of the President shall qualify as military service under the Act.

The Soldiers' and Sailors' Civil Relief Act of 1940 provides certain legal protection and safeguards to those individuals serving on active duty in defense of the nation, "under the emergent conditions which threaten the peace and security of the United States." The purpose of this act was "to enable such persons to devote their entire energy to the defense needs of the nation." These provisions apply to members of the National Guard, while performing Federal service. If the National Guard is mobilized at the direction of the State governor, these provisions do not apply.

However, since the events of September 11, 2001, the role of the National Guard has drastically changed. They have now taken on additional military security responsibilities, at the request of the President, as part of Operation Enduring Freedom. While those members of the National Guard serving on active duty (not under title 10, USC) are entitled to military healthcare, they are not afforded the same legal protections of the Soldiers' and Sailors' Civil Relief Act as other members of the armed forces. The American Legion supports the much-needed change to the Act proposed by S. 1680.

S. 1905 proposes a number of improvements in the VA healthcare and benefit programs.

Section 101 of the legislation would amend title 38, USC, section 1701 to authorize VA to provide care for newborn children of enrolled women veterans, as part of its "medical services." Such care may be provided until the mother is discharged from the hospital after delivery of the child or for 14 days after the date of the child's birth, whichever period is shorter, and only if the VA contracted for the delivery of the child. The American Legion supports the extension of such services to women veterans.

Section 102 would amend title 38, USC, section 1712 to eliminate the requirement that a veteran must have been held as a prisoner-of-war for a period of not less than 90 days, in order to be eligible for VA outpatient dental care.

The American Legion has long supported changes in the law that are intended to alleviate the health problems and disabilities resulting from the hardships experienced by former prisoners-of-war during their internment. The American Legion supports this proposed change.

Section 103 would exempt the position of the Director of the VA Nursing Service from the nurse-pay restrictions in title 38, USC, section 7451 and require that the Director of Nursing Service be paid at a rate comparable to other non-physicians (SES) VA executives.

The American Legion has no objection to this proposal.

Section 201 would amend title 38, USC, section 112 to prohibit the issuance of Presidential Memorial Certificate, a burial flag, or a government headstone or gravemarker, if the deceased veteran had been convicted of committing a Federal or State capitol crime or who are determined administratively to have committed such crime, but had not been convicted due to death or flight to avoid prosecution. Section 202 would disqualify certain individuals for memorialization in veterans cemeteries.

Mr. Chairman, we understand the strong feelings underlying these proposals that those who commit capitol crimes basically forfeit their civil rights and should be

punished to the full extent to the law. However, the law also provides that anyone who honorably serves in the Armed Forces of the United States is entitled to a burial flag, a Presidential Memorial Certificate, and a government headstone or marker based on such service. These proposals would take away an individual's right to these benefits ex post facto, based on something they did later in life and that has no relationship to their period of honorable military service. The American Legion opposes Sections 201 and 202.

Section 203 proposes to amend title 38, USC, section 7266 to clarify the period within which to appeal decisions of the Board of Veterans Appeals (BVA).

Currently, VA is required, under title 38, USC, section 7104(e), to promptly mail a copy of the BVA decision to the claimant at the last known address and to mail or otherwise send a copy of the decision to the claimant's authorized representative, if there is one. The claimant then has 120 days from the date of mailing to file a notice of appeal with the United States Court of Appeals for Veterans Claims (the Court).

Mr. Chairman, in an appeal to the Court, under this proposal, rather than having 120 days to file an appeal to the Court from the date the Board's decision is mailed to the claimant, the 120 appeal period would run from the date a copy of the Board's decision is mailed or sent to the authorized representative, if any. The American Legion believes this would be beneficial to the claimant. It recognizes that there may be some delay at the Board in sending a copy of the decision to the representative and that the claimant should have sufficient opportunity to consult with their representative regarding a possible appeal.

Mr. Chairman, The American Legion has no objections to the proposed changes included in sections 301–304 of this bill.

S. 2003 would amend title 38, USC, section 5301 to prohibit any type of agreement assigning the payment of a veteran's compensation, pension, or survivor's DIC benefits to another person. It includes penalties against such persons entering into such agreements with a veteran or other beneficiary

The American Legion remains concerned by stories of various loan "scams" being used by companies and individuals to take advantage of unsuspecting, sick and disabled veterans and their families. They offer instant lump-sum cash payment in exchange for the individual's VA benefits. However, the actual payment is steeply discounted by 60–70 percent or higher, according to a VA investigation. The companies apparently go to great lengths to avoid calling these arrangements loans, which could violate State and Federal laws against loan sharking and truth-in-lending requirements. While veterans should be free to do what they want with their benefits, The American Legion believes there is a loophole in the current law that, as a matter of public policy, should be closed, in order to prevent veterans from being victimized by such predatory practices. These schemes have sought to skirt the intent, if not the letter of the current law. The American Legion believes this proposal will help address this problem and provide substantial penalties for violators of the law.

This legislation would also authorize the appropriation of $3 million to be used over the next five years by VA for the purpose of outreach and education concerning the prohibition to assignment of their veterans' benefits and financial risks of entering into any such an arrangement.

S. 2025 would amend title 38, USC, section 1562 to increase the amount of special pension for Medal of Honor recipients from $600 to $1000 monthly. It would also provide for an annual adjustment in this rate indexed to the cost-of-living adjustment authorized for Social Security recipients. This bill further proposes to authorize the payment of a lump-sum payment of special pension for the period from the date of the award of the Medal of Honor to the date of initial receipt of the special pension. As with regard to S. 1113, The American Legion supports the proposed increased in this special benefit.

The legislation also provides for increased criminal penalties associated with the misuse or fraud relating to the Medal of Honor. Although The American Legion has no formal position on this proposal, we believe it is essential to protect the honor and integrity of the nation's highest military award. This requires that there be substantial penalties for those individuals or companies who would denigrate the Medal of Honor for any reason or purpose.

S. 2043 would extend by five years VA's authority to provide non-institutional extended care services and required nursing home care.

Section 1 of the bill would amend title 38, USC, to extend by five years the period for the provision by the Secretary of VA of non-institutional extended care services and required nursing home care, and for other purposes.

The provisions of the Veterans' Millennium Health Care and Benefits Act, P.L. 106–117, that this bill would involve essential elements of care that are critical to VA's efforts to meet the needs of its substantial aged and aging veteran population.

The American Legion is concerned about VA's struggle to define its role in long term care and its inability to meet the capacity requirements of the Millennium bill. Clearly, with the length of time it has taken to develop the regulations and guidance to implement the Millennium bill, VA has not had sufficient time to assess or demonstrate the benefits of the mandated provisions for nursing home care nor the advantages of non-institutional programs and services.

For VA to meet the mandate for nursing home care, it must have sufficient resources dedicated to this endeavor, and it must maintain its capacity as indicated by legislation. Too often VA nursing home care is being shifted to the private sector, and after brief contracts for community care, veterans and their families must apply for Medicaid or Medicare or assume responsibility for the cost of care. VA Nursing Home Care Unit facilities are also being underutilized due to staffing shortages. In site visits to Las Vegas, Nevada and El Paso, Texas, The American Legion's Field Service Unit (FSU) observed that veterans there do not have similar access to the range of long term care services, in particular home based services, available to other veterans in the country.

The American Legion recognizes the benefits of a robust non-institutional care program that supports and maintains veterans at their home rather than in institutional settings. Therefore, The American Legion strongly concurs with an extension of the time frame for the provision of the stated services, and will continue to monitor VA's efforts in providing extended care.

S. 2044 would provide for the further expansion and improvement of VA program of specialized mental health services.

This legislation further improves specialized mental health services to veterans by increasing the funds available for already-established grant programs for the treatment of veterans with post-traumatic stress disorder and substance use disorders. The American Legion applauds the efforts to channel resources for the treatment of these veterans. On numerous occasions, The American Legion has voiced its concerns about the lack of reinvestment in mental health programs subsequent to their significant restructuring during the past several years. These funds are essential for many of the programs that initially requested funds under this authority, but who have yet to move forward with the intended enhancements.

S. 2060 would authorize the VA Regional Office in St. Petersburg, Florida to be named after Franklin D. Miller, in recognition of his distinguished military career and service to his fellow veterans and the nation.

The American Legion has no objection to this proposal.

S. 2073 would authorize the lump-sum award of the special Medal of Honor pension to Ed W. Freeman retroactively from November 1965 to June 2001.

The American Legion has no objection to this legislation.

S. 2074, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2002," would provide a cost-of-living adjustment (COLA) in the monthly rates of disability compensation and Dependency and Indemnity Compensation. These benefits would increase by the same percentage as Social Security benefits and be effective December 1, 2002.

The American Legion supports the annual adjustment in the monthly compensation and DIC benefits for disabled veterans and DIC beneficiaries. It is important that their financial support is not eroded by increases in the cost-of-living. However, The American Legion remains opposed to any effort that would automatically index their COLA to that provided for Social Security beneficiaries. We believe Congress has a responsibility to annually consider the needs of service-disabled veterans and their families and provide an appropriate adjustment in their benefits. Hearings on the subject afford a valuable forum to discuss this and other compensation-related issues, which might not otherwise be available.

S. 2079 proposes the amendment of title 38, USC, to expand the scope of review of the United States Court of Appeals for Veterans Claims and United States Court of Appeals for the Federal Circuit.

Mr. Chairman, The American Legion believes this legislation provides for a number of significant improvements in veterans' judicial review.

Section 1 would amend title 38, USC, section 502 to delete the exclusion from judicial review of actions relating to the adoption or revision of Part 4 of title 38, Code of Federal Regulation, Schedule of Rating Disabilities. Under this proposal, the United States Court of Appeals for the Federal Circuit would have sole jurisdiction in any appeal involving this issue. This exception was included in P.L. 102–83. However, there are substantive issues of law contained in Part 4, which the Court cannot consider. There are issues relating to the application of the rating schedule, attitude of rating specialists, total disability and other, which should be, at least, subject to judicial scrutiny.

Section 2 would amend title 38, USC, section 7261 to clarify the standard of review under which the Court of Appeals for Veterans would reverse an erroneous finding of fact by the Board of Veterans Appeals. Currently, VA is required to give the claimant the benefit of reasonable doubt, (under title 38, USC, 5107(b)), when all of the evidence of record is considered and there is an approximate balance of positive and negative evidence regarding the merits of the claim. When the claim comes before the Court, the appellant must show that the Board of Veterans Appeals decision was clearly erroneous. This standard is often difficult to meet, since the Court will uphold the factual determinations of the Board of Veterans Appeals, if there is a plausible basis for their finding of fact. To overcome this disparity, this legislation would require the Court to apply the less stringent "preponderance of evidence" standard in reviewing factual determinations of the Board of Veterans Appeals. We believe this proposed change in the law would enable the Court to more clearly and fairly address the claimant's issues in their appeal.

Section 2 would also amend section 7261 to expand the authority of the Court to not only set aside determinations of the Board of Veterans Appeals, but to reverse them rather than having to remand them back for further review and readjudication. This is a historic change in the judicial review process. It addresses a longstanding concern of The American Legion about the years it often takes for a claimant to get their case finally before the Court only to have it remanded back to the Board, which means further frustration, hardship, and delay. This will help provide more timely final decisions on issues on appeal by the Court.

Section 2 would further amend section 7261 to require the Court to utilize the entire evidence of record and set forth the evidence upon which the Court relied upon in making its determination. The American Legion believes this provides for a fuller description and discussion of all the evidence and information considered by the Court in reaching its decision, and, therefore, would be beneficial to the claimant.

Section 3 would amend title 38, USC, section 7292, to provide that United States Court of Appeals for the Federal Circuit (the Federal Circuit) shall have jurisdiction over decisions of the United States Court of Appeals for veterans claims on all questions of law. Currently, the Federal Circuit is only authorized to review the Court's findings on question of statutory or regulatory interpretation. The Federal Circuit's decision in *Livingston* v. *Derwinski,* 959 F. 2d 224 (1992), highlighted the problem of the statutory limitation on the Federal Circuit's ability to address certain questions of law raised in an appeal of a decision of the lower Court. The American Legion believes this change will overcome some of the shortcomings in the current statutes providing for judicial review of the veteran's claims.

Section 4 would authorize the payment of fees under the Equal Access to Justice Act to non-attorney practitioners before the United States Court of Appeals for Veterans Claims. The American Legion has no formal position on this proposal.

S. 2132 would provide for the establishment of VA medical emergency preparedness centers and enhancement of the VA medical research program.

This legislation authorizes the Secretary to establish at least four medical emergency preparedness centers at VA medical centers with staffing by VA employees. The mission of the centers includes carrying out research and developing methods of detection, diagnosis, vaccination, protection, and treatment for chemical, biological, and radiological threats to the public health and safety. The centers would also provide education, training, and advice to health-care professionals, including health care professionals outside VHA; and provide contingent rapid response laboratory assistance and other assistance to Federal, State, and local health care authorities in the event of a national emergency.

Unilaterally, VA responded to the tragic events of September 11th very quickly. The Veterans Benefits Administration (VBA), VHA, and the National Cemetery Administration were mobilized to assist in answering questions, provide mental health services, filing for benefits, and assisting with burial arrangements. Also, VA worked with Federal Emergency Management Agency (FEMA), the Office of Crime Victims (OCV), American Airlines and the American Red Cross. VA's National Center for Post-Traumatic Stress Disorder (PTSD) sent six team members from the Palo Alto Education Division to the Pentagon Family Assistance Center within days of the attack. For more than two weeks, this team provided psychological support and education to the recovery workers and family members at two separate locations.

Even though the response was quick and more than adequate, much work remains to be done on the ability of this nation to respond immediately in the event of a national emergency. The establishment of these emergency preparedness centers, we believe, is a step in the right direction. However, there already exists a Center within VA that performs many of the functions proposed in this legislation.

A team from The American Legion conducted an on-site visit and was very impressed with the operation.

The Emergency Management Strategic Healthcare Group (EMSHG) Emergency Operations Center was activated in response to VA's concerns over Y2K, and has remained the alternate site for VA Central Office in the event of a national emergency. It has been revised to oversee VA's response to combat and civilian casualties resulting from weapons of mass destruction (WMD); nuclear, biological or chemical (NBC) attacks or natural or accidental disasters. The mission of EMSHG is to provide comprehensive emergency management services to VA, coordinate backup to the Department of Defense (DoD) and assist the public via the National Disaster Medical System (NDMS) and the Federal Response Plan (FRP).

The American Legion has testified in the past that it would like to see close involvement of this entity in the establishment of the proposed additional emergency preparedness centers. The American Legion was very impressed with the team and its operations at the EMSHG and is very supportive of its efforts to facilitate coordination in the event of a national disaster. Many things remain to be done that The American Legion would like to see incorporated into the medical emergency preparedness centers, based on some of the observations we made during the EMSHG site visit. These include the following:

1. Assess how VA will continue to act as a back up for DoD and the NDMS under the CARES process. The EMSHG should be incorporated into any further VISN evaluations and as the options are implemented in VISN 12;
2. Increase coordination with the National Center for PTSD and the Readjustment Counseling Services as part of the strategic planning process;
3. Garner DoD input in developing a better understanding of their needs through national and local efforts, especially in evaluating their bed space needs;
4. Consider VA's role with the NTSB when military assets and personnel are involved;
5. Require VA identify unutilized space available for use; and
6. Create a National Registry of personnel to contact in the event of a national emergency.

The American Legion reiterates its support for the establishment of the proposed emergency preparedness centers.

Section 2 clarifies that VA Medical Centers may enter into contracts or other forms of agreements with nonprofit research corporations to provide services to facilitate VA research and education.

The American Legion believes that research and education for the betterment of the veteran and his family is a key element of the VA's overall mission. We have always advocated strongly for research and the dollars needed to support it.

The American Legion supports this change relating to contracts between VA Medical Centers and research corporations.

Section 3 clarifies that research corporation employees are covered under the Federal Tort Claims Act (FTCA).

It is critical that the employees of VA-affiliated research corporations be protected under the FTCA while carrying out their duties under a VA appointment. If they are not, the alternatives the corporations would have to look at are not acceptable. Two of these are to either use funds normally devoted to supporting research to buy an expensive blanket insurance policy or to close down the entire operation, neither of which is acceptable.

The American Legion supports this legislation.

S. 2186, the "The Department of Veterans Affairs Reorganization Act of 2002," would establish within VA an Assistant Secretary position that would be responsible for operations, preparedness, security and law enforcement functions. The American Legion recognizes the extremely important role VA has as a key support agency in disaster response, as well as its responsibilities to protect those who use, staff and visit its facilities, while assuring veterans services are maintained. The American Legion has no objection to the addition of another Assistant Secretary position, per the Secretary's request, to help organize VA so that it effectively responds to its responsibilities.

S. 2187, the "Department of Veterans Affairs Emergency Medical Care Act of 2002," would authorize VA to furnish healthcare during a major disaster or medical emergency. It also seeks to give VA the statutory authority, which it has never had, to furnish care for non-veterans and non-active-duty military personnel. The American Legion applauds the efforts and contributions VA has made to the general public in response to major national disasters. Over the past 20 years, VA has responded to every major domestic disaster, including Oklahoma City, Hurricanes Andrew and Floyd, and of course, the attacks perpetrated upon the nation on September 11, 2001.

The American Legion witnessed first hand some of the care provided by the VA at the Pentagon after September 11. The VA's national Center for Post-Traumatic Stress Disorder (PTSD) sent six team members form the Palo Alto Education division to the Pentagon Family Assistance Center within days of the attack. For more than two weeks, this team provided psychological support and education to the recovery workers and family members at two separate locations.

At the Pentagon Family Assistance Center, VA's team provided:

- Psycho-education for counselors in support of families of missing or deceased;
- Debriefing of support staff, counselors, and other agencies (including Red Cross, FEMA, and DoD);
- Psycho-education and debriefing to Casualty Assistance Officers (CAO), who are charged with providing case management to the families of the deceased;
- Educational materials regarding disaster response for victims and helpers;
- Facilitator's guide for behavioral and emotional support debriefing for use by DoD counselors;
- Consultation with operation and mental health leadership in a long-term disaster response plan;
- Family support; and
- Program evaluation questionnaire for CAOs to assess preparedness, effectiveness, and utilization of resources while providing services for family members of deceased victims.

At the US Army Community and Family Support Center command Group in Alexandria, Virginia, VA's team provided:

- Psycho-education regarding human response to disaster and utilization of psychological first aid;
- Psycho-educational materials;
- Counseling to Pentagon employees; and
- A survey for staff to use as self-assessment in response to the disaster.

As always, VA was there to help all the victims. Their contributions to all the disaster relief they have provided over the many years is immeasurable.

The American Legion strongly supports this bill.

S. 2205 would amend title 38, USC, to clarify entitlement to disability compensation of women who have service-connected mastectomies, provide permanent authority for counseling and treatment for sexual trauma, and for other purposes.

Section 1 would amend section 1114(k) to provide that the loss of half or more of the tissue of one or both breasts meet the criteria for entitlement to special monthly compensation. The enactment of legislation last year provided entitlement to special monthly compensation for those women veterans who suffered the loss of one or both breasts as a result of their military service. However, VA implementing regulations arbitrarily defined such "loss" as to require the complete removal of one or both breasts through either a simple or radical mastectomy. The American Legion believes this definition is too restrictive and inconsistent with the intent of law, which was to assist women veterans who have undergone this type of procedure in their rehabilitation.

Section 2 would make permanent VA's authority to provide counseling and treatment for victims of sexual trauma. Current authority for these counseling and treatment programs runs only through December 31, 2004. The American Legion believes this type of care is an essential part of VA's comprehensive medical care services and, as such, the requirement for periodic reauthorization adversely affects VA's ability to effectively plan and budget for this program.

Section 3 requires VA to submit a report to Congress on its healthcare program for women veterans. The American Legion has been a strong supporter of VA's women veteran healthcare program and has worked with VA and Members of Congress on ensuring that these veterans have the necessary services and programs available to meet their special healthcare needs. VA's overall healthcare delivery system has undergone radical changes in recent years and it continues to evolve and develop. In this time of transition and change, it is important to ensure that women veterans' programs are getting proper attention and resources. The American Legion believes the proposed report on how VA is delivering healthcare to women veterans will be helpful to Congress and those in the veterans' community in understanding how well the healthcare needs of this veteran population are being met.

S. 2209, the "Robert Carey Service Disabled Veterans' Insurance Act of 2002," would amend title 38, USC, to provide an additional program of service-disabled veteran's insurance (SDVI), and to update certain basic structural components of the existing service-disabled insurance program. The American Legion is generally supportive of this proposal.

This legislation is based on certain findings by the private sector study on Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Dis-

abilities, completed in Spring 2001, which found an enhancement was needed in insurance coverage options for veterans with service-connected disabilities who had been out of service for several years. The proposed legislation would provide such veterans up to $50,000 Term insurance coverage on a level, permanent premium basis up to age 70, at which point the amount of insurance would reduce to 20 percent of the face value held, but which would then be in a paid-up insurance state. A standard disability waiver of premiums provision would also apply, and the aggregate of service-disabled coverage held under all such programs would not exceed $50,000. Qualifying criteria would be the same as for the current SDVI program, but with the added constraint of an overall eligibility period of applying for such within 10 years of release from active duty.

The American Legion has long been in favor of an enhancement to the VA's SDVI program, which would bring it into line with today's economic realities. The standard SDVI maximum of $10,000 has long been insufficient, and only the most disabled veterans under age 65 who cannot follow gainful employment because of their disability qualify for supplemental SDVI coverage, for which they must pay full premiums.

The American Legion feels this legislation to be a step in the right direction in addressing certain deficiencies of the present program, but we favor a more extensive overall eligibility period than the 10 years after release from active duty specified in the bill. The American Legion further believes that service-disabled veterans who receive increases in their service-connected disabilities, rather than only those who receive original ratings for service-connection, should be eligible to apply for such coverage and that such provision be extended to the regular SDVI program as well. In connection with this issue, The American Legion has found that the current two-year eligibility period from the date of notification of a rating granting service connection is too restrictive and should be extended to a more reasonable and appropriate time for all SDVI programs.

Too many disabled veterans, as found both by the Program Evaluation group and as The American Legion has seen in its own extensive experience, lose the chance for much needed insurance coverage because they are unaware of the program, or because they were not able to see beforehand how their service-connected disabilities would progress. Further, as the majority of applications for SDVI are currently from Viet Nam Era veterans, we feel an open period on this new insurance program for this group is appropriate. This would take into account their current service-connected rating levels, the deficiencies in the VA insurance programs in effect during that time (such as the absence of an operating transitional Veterans' Group Life Insurance program), and no subsequent opportunity for coverage afforded them similar to the Veterans' Reopened Insurance program permitted to veterans of WWII and Korea in the 1965–66 time period.

The reduction to 20 percent of face value at age 70, with such remainder then being in a paid up status, we understand to be necessitated by budget considerations. However, VA should take special care that such provision, along, of course, with the existence of the program itself if approved by Congress, be fully communicated to all eligible veterans to avoid misunderstanding and confusion in later years.

This proposed legislation does not permit the provisions of regular SDVI Gratuitous insurance to apply, retaining the limit in such cases to $10,000 even for those veterans whom would have qualified for coverage under this proposal.

As the primary purpose of Gratuitous SDVI continues to be a matter of equity and principle, to permit an insurance settlement in cases where a veteran, otherwise eligible, could not apply for SDVI because of a service-connected disability rendering him or her mentally incompetent and hence unable to do so, thus placing them on an even footing with other qualifying service-connected veterans. The American Legion believes the same principle should govern this new program. Beneficiaries of deceased veterans who would otherwise have qualified for insurance under this proposed legislation and also meets the rigorous criteria for gratuitous insurance should be permitted the full $50,000 settlement. Given the rarity of such cases we do not believe this should impact adversely on program costs to a significant extent. Beneficiaries of those veterans meeting gratuitous insurance criteria outside the overall eligibility period for such new coverage, where the veteran would have qualified only for standard SDVI, would still be eligible for the regular $10,000 Gratuitous insurance. The SDVI programs would then be consistent in their application.

Additionally, The American Legion is in full agreement with VA's proposal to switch to the Commissioners 1980 Standard Ordinary Table of Mortality for the determination of premium rates for all SDVI programs, rather than the outdated 1941 Table presently in use. It is neither sensible nor fair to base premiums rates for

service-disabled veterans on mortality tables over sixty years old, and long rendered obsolete by changes in American living conditions and modern medicine, evident to all. Such action constitutes a deliberate overcharging of disabled veterans for their own benefits, and works to negate the original intent of Congress in such programs.

Finally, The American Legion supports the proposal to add a new insurance benefit for service-connected veterans. The American Legion strongly believes both the new issue presently under consideration and the current SDVI program, are necessary to a viable and proper set of benefits for our country's veterans who we continue to rely on in times of recurring crisis.

S. 2227 proposes to clarity the effective date of the modification treatment for retirement annuity purposes the part-time service before April 7, 1986, of certain VA health care professionals. Retired VA nurses, who worked part-time before 1986, worked hard to have P.L. 107–135, Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, passed to restore full pension benefits which were "grandfathered" for other employees. The intent of the law was to restore full credit promised to all nurses who worked part-time before 1986. However, there are those who are interpreting the law as only restoring the full pensions to Registered Nurses that retire after the bill was signed in January 2002. This interpretation has caused considerable consternation among the nursing population affected by P.L. 107–135, and has prompted this clarification.

The American Legion continues to believe that given VA's nursing shortage, coupled with the critical need to provide the best care to the veteran population possible, any further decrease in benefits to VA nurses would jeopardize the recruitment and retention programs of that nursing population.

The American Legion fully supports this legislation.

S. 2228 would authorize VA to increase from five to 15 the number of Mental Illness Research, Education, and Clinical Centers (MIRECCs) established by VHA. The American Legion continues to strongly support the development of the MIRECCs, both in geriatrics and mental illness. They are major contributors to improvements in direct patient care, advancements in knowledge through research, the dissemination of information through education as well as the development of quality providers based on the three core components of the centers' activities. While these centers are national in scope, their prosperity is often tied to the fate of the host medical center or Veterans Integrated Service Network (VISN) as they become subject to hiring freezes and budget cutbacks faced by those entities.

The American Legion adamantly supports the further development of additional MIRECCs noting once again the need for accompanying funding to support these efforts if they are to remain viable.

S. 2229, the "Veterans' Benefits Improvement Act of 2002," would increase the monthly rates of veterans' disability compensation and dependency and indemnity compensation (DIC) by the same percentage as the increase authorized in Social Security benefits, effective December 1, 2002. The American Legion supports the annual cost-of-living adjustment in these benefits, as proposed in S. 2229 and S. 2074.

This legislation would also provide that the Secretary of VA shall ensure that staffing and level of VA extended care services, excluding nursing home care, are not less than FY 1998 levels. It would also require that the average daily census in VA nursing home facilities, including those veterans placed in community contract facilities as well as State nursing homes, is not less than FY 1998 levels.

S. 2230 would make permanent the authority of the Secretary of VA to guarantee adjustable rate mortgage and to authorize VA to guarantee hybrid adjustable rate mortgages.

The American Legion supports the proposal to make permanent the authority of the Secretary of VA to guarantee adjustable rate mortgages and authorize the guarantee of hybrid adjustable rate mortgages. Originally the purpose of the VA home loan guaranty program was to help returning World War II veterans in their readjustment to civilian life and to stimulate the economy by assisting those veterans in obtaining mortgage financing from the private sector. In 1992, Congress authorized VA to conduct an initial three-year pilot program, which allowed VA to guarantee Adjustable Rate Mortgages (ARMs). This legislation would make this type of mortgage a permanent part of the VA home loan guaranty program. It would also allow the borrower to obtain a home loan with an interest rate below the current market rate for a fixed number of years rather then having the rate change on a yearly basis. Therefore, The American Legion supports this proposed legislation to improve and strengthen the ability of the VA Loan Guaranty Service's to serve America's veterans.

S. 2231, the "Survivors' and Dependents' Educational Assistance Adjustment Act of 2002," would increase the monthly rates of educational assistance for surviving spouses and dependents under Chapter 35 of title 38, USC. The American Legion

is supportive of the proposed changes. It is important that these benefits be periodically increased, in order to keep pace with increased cost of higher education and maintain the level of assistance necessary to achieve the goals of the program.

S. 2237, the "Veterans' Hearing Loss Compensation Act of 2002," and would:

1. Amend title 38, USC, section 1160(a)(3), to eliminate the requirement that a veteran who is totally deaf in one ear due to a service-connected condition also be totally deaf in the other ear due to a non-service-connected condition in order for compensation to be paid under this section as if the combination of disabilities were the result of service-connected disability;

2. Add to title 38, USC, new Section 1119, Presumption of service-connection for hearing loss associated with particular military occupational specialties. The particular military occupational specialties for which presumptive service-connection would be granted are to be identified by the National Academy of Sciences (NAS). The Secretary of VA would determine which of the occupational specialties identified by NAS would actually be covered by the new statute and;

3. Direct that VA engage NAS to undertake a large-scale assessment of acoustic trauma associated with various military occupational specialties.

The American Legion has no formal position on these issues; however we offer the following comments and concerns. The American Legion is pleased with the provision of S. 2237 eliminating the total deafness requirement from title 38, USC, section 1160(a)(3), which provides special consideration in the evaluation of a veteran's overall disability when there is the loss or loss of use of a paired organ or extremity. This change will make it easier for a veteran who is partially deaf to be compensated at a higher rate under the existing rating schedule by allowing the non-service connected ear to be evaluated at its actual level of hearing loss. The American Legion believes veterans should be compensated for the full extent of their hearing disability.

The American Legion has long been concerned by the difficulties many veteran have in establishing service-connection for delayed onset hearing loss incurred as a result of exposure to noise and acoustic trauma while in service. The fact that normal hearing may have been noted on separation does not necessarily preclude the establishment of service-connection for a diagnosed hearing loss later in life. However, the medical linkage required to establish service connection many years after service is an obstacle that is difficult and, in many instances, impossible for the veteran to overcome.

This legislation would go a long way toward eliminating that obstacle for many veterans whose service to their country included exposure to extreme noise and acoustic trauma. According to the Merck Manual, any source of intense noise, such as internal combustion engines, heavy machinery, gunfire, or aircraft, may damage the inner ear. Although persons vary greatly in susceptibility to noise-induced hearing loss, nearly everyone loses some hearing if exposed to sufficiently intense noise for an adequate time. However, that hearing loss may not be evident until years later. Any noise above 85 decibels can be damaging. High-frequency tinnitus usually accompanies the hearing loss. It appears that the loss occurs first at the 4 kHz level and gradually occurs in the lower and higher frequencies, if the noise exposure continues. In contrast to most sensorineural hearing losses, loss is less at 8 kHz than at 4 kHz.

The American Legion notes that this bill uses the term "acoustic trauma" as the source of injury to a veteran's hearing. This type of trauma is usually associated with high-compression blast or explosion and produces the same kind of sensory hearing loss as noise-induced trauma. While veterans in such Military Occupational Specialties (MOSs) as infantry, artillery, naval gunnery and explosive ordnance disposal are routinely exposed to these types of noise hazards, a large number of veterans claiming service-connection for noise-induced hearing loss were in military-industrial specialties such as aircraft flightline and flight deck operations, shipboard boiler rooms, machine shops and heavy equipment maintenance. The American Legion is concerned that the term "acoustic trauma" will deprive many veterans of the benefit of the presumption contemplated by this legislation and suggests that the language be amended to include "noise-induced hearing loss."

The American Legion welcomes the study of the effects of military service on hearing acuity across the veteran population, including the assessment of VA's and DoD's data on hearing threshold shift in veterans who served from the onset of World War II, forward. We believe this study will yield valuable data on the treatment of hearing loss in veterans and the prevention of hearing loss in future veterans.

Mr. Chairman, that completes our testimony.

Chairman ROCKEFELLER. It is ruthless, is it not?

Mr. FISCHL. Yes, it is. [Laughter.]

I was going to ask the VFW to yield part of their time, but——

Mr. CULLINAN. I had already declined, Mr. Chairman.

Mr. FISCHL. They have a history of being not cooperative. [Laughter.]

Chairman ROCKEFELLER. No, the VSO's have gotten closer, but not that close. [Laughter.]

I have questions, but what is embarrassing is I know exactly how you are going to respond to each one of them. So I could use that to get you to respond to each one of them, to put it on the record, but several of you have already addressed some of those questions. I do not see a need at this point to probe because we have your testimony. We know what you think. I think I would have guessed what you were going to say before we received the testimony, and you have come and made your pitch to help us now prepare for a markup.

So I do not feel the need. There are not other members here. I, personally, do not feel the need to grill you. I would if I felt the need to, but I do not. And so I think what I will just do is really thank you for coming here, for all of you having, in your various ways, worked to help support, to critique, to oppose certain legislation and, thus, to help us arrive at how we are going to act on this, when hopefully we have more members.

So I thank you very much. I thank all of you who attended, and this hearing stands in recess.

[Whereupon, at 10:51 a.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. MICHAEL B. ENZI, U.S. SENATOR FROM WYOMING

Thank you, Chairman Rockefeller and Ranking Member Specter, for holding this hearing on legislation pending before the Veterans' Affairs Committee. I particularly appreciate the opportunity to speak on behalf of the "Veterans Road to Health Care Act of 2001," which I introduced last June. This legislation would raise the travel reimbursement rate for veterans who must travel to hospitals operated by the U.S. Department for Veterans' Affairs for treatment. Veterans currently receive 11 cents per mile for reimbursement. This bill would raise that to 34.5 cents per mile, which is equivalent to the reimbursement level for Federal employees. My bill would also provide reimbursement at the Federal employee level for veterans who have been recommended to special care facilities by their VA physician for a non-service connected disability. This provision would provide veterans access to critical care that the VA recognizes but does not have the facilities to treat.

Given the fluctuating nature of gas prices and the many costs associated with automobile travel, 11 cents per mile rarely covers the expenses veterans face when they are forced to travel to distant places for health care. I have heard from numerous veterans in Wyoming who describe the difficulty in budgeting for travel between their hometown and the VA hospital, especially given the fact that many are on a fixed income. Health care access is vital for our nation's veterans, and they should not be forced to choose between paying for travel to a treatment center recommended by the VA or for other necessities needed for everyday life.

In Wyoming, we have two VA hospitals, one in Cheyenne and one in Sheridan. These hospitals provide many critical services, however many Wyoming veterans have to travel hundreds of miles to be treated at the facility and to be covered by their military health care plan. This poses a serious problem in terms of travel expense. Some of the largest towns in Wyoming are over 300 miles away from the nearest VA facility. For example, a veteran living in Evanston, Wyoming's eighth largest city, must travel 360 miles to reach a VA hospital, while a veteran from Rock Springs, Wyoming's fifth largest city has to travel almost 300 miles to Cheyenne or Sheridan. This is large population of veterans who must bear the out-of-pocket expense of promised health care.

This bill particularly addresses the health care needs of veterans who require special treatment. It would allow veterans who have been referred to a special care center by their VA physician to be reimbursed under the Travel Beneficiary Program for their travel to the specialized facility. This would apply to only those veterans who cannot receive adequate care at their VA facility and who have a non-service connected disability.

This legislation is important to all veterans, but it is particularly important for veterans in rural states like my home state of Wyoming. Because rural states are less populated, have greater distances between towns, and far fewer options for transportation, the cost of automobile travel is a significant barrier to quality medical care. Unlike urban areas, where alternative travel is readily available, rural veterans face a disparate cost in receiving comparable health care benefits. For this reason, I believe we must strengthen the VA's Beneficiary Travel Program.

Although the U.S. Department of Veterans' Affairs opposes this bill, it is important to note that their opposition is based on their current budgetary constraints. The VA will testify that this provision was not included in last year's appropriations process, and, therefore, the immediate enactment date would result in funds being pulled directly from the medical care budget. Yet, what the VA fails to mention is that veterans have little need for quality medical care if they cannot access it. Although I understand the VA's concerns, I would like to reiterate that the intent of this bill is to improve medical care for all veterans and equalize the disparate treatment of rural and urban veterans. As such, I strongly encourage the Veterans' Affairs Committee to consider this bill based on its merits, and then work with the

VA to address the problems with the enactment date and the additional appropriations needs.

Our veterans made unimaginable sacrifices in defending the freedoms of this country, and I believe the government should provide adequate and equal health care for all veterans regardless of their geographic location. It is our nation's responsibility to provide veterans the kind of access to health care they have earned through their service to our country. Travel expenses should not be THE deterring factor when deciding whether or not to seek treatment. This bill would help equalize access and I strongly urge you to consider it carefully.

Thank you Mr. Chairman.

AIR FORCE ASSOCIATION,
Arlington, Virginia, May 1, 2002.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Senate Veterans Affairs Committee,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN; The Air Force Association is pleased to offer our endorsement and comments on a number of legislative items to be considered by the Senate Veterans Affairs Committee in the coming days and weeks. On behalf of our membership of 146,000 airmen, veterans, retirees and their dependents, thank you for your hard work and leadership on issues affecting the United States Air Force and its veterans.

In your Committee's upcoming consideration and markup of legislation, I offer our endorsement of the following important bills:

• S. 1408: Increasing the income threshold for pharmacy co-payments addresses an important inequity in the current law. The Air Force Association does not support means testing for earned benefits under any circumstance; however, we do understand the need to offer a lower cost benefit to those veterans who are most in need of financial assistance. Prescription drug, coverage is one of the VA's most vital benefits, and low cost access should be brought in line with all other VA health care.

• S. 1905, S. 2186 & S. 2229: Addressing primarily technical and administrative issues within the VA, these bills are important as they go a long way to offering Secretary Principi the latitude and authority he needs to ensure our nation's veterans are receiving the quality and efficiency of care they deserve.

• S. 2187: Events of the last year have tested our nation's resolve, and our ability to respond to domestic emergencies. This bill recognizes the important contribution that the VA makes to our nation's disaster response capability and is an important step in ensuring our ability to respond to future emergencies.

• S. 2231: There is little doubt that the surviving dependents of those service members who make the ultimate sacrifice for their nation deserve all the support we can give them. This legislation to bring the Dependents Education Assistance program's benefit levels in line with the Montgomery GI Bill is a vital step in our support of these deserving individuals.

• S. 1576: Increasing numbers of veterans of the Gulf War are falling ill to unknown ailments or diseases with unknown causes. Our efforts in both research of these illnesses and the care of those who are sick are vital to our nations own health. Extending priority of care and access to care is nothing short of the right thing to do.

As always, we appreciate the opportunity to voice our concern, and greatly appreciate your efforts on behalf of some of our nation's most deserving individuals.

Sincerely,

THOMAS J. MCKEE,
National Chairman of the Board.

PREPARED STATEMENT OF THOMAS H. MILLER, EXECUTIVE DIRECTOR, BLINDED VETERANS ASSOCIATION

On behalf of the Blinded Veterans Association, thank you for this opportunity to submit our views on S.984, "Veterans Road to Health Care Act of 2001." BVA strongly supports this legislation. This is demonstrated by the BVA's adoption of Resolution 20–01 urging Congress to adopt S.984, which amends Title 38 USC section on Beneficiary Travel. BVA's resolution requests the Department of Veterans Affairs (VA) to pay travel for all veterans accepted for care in one of the VA Special

Disabilities Programs as well as increase the amount reimbursed for expenses incurred in travel for VA medical appointments.

BVA is grateful to Congressman Enzi for including the beneficiary travel section within this legislation. We are currently discussing some changes in language with Congressman Enzi's staff regarding the language of this section. BVA supports the provision in S.984 that allows for payment of beneficiary travel for veterans specifically to DEPARTMENTAL facilities.

BVA encourages this Committee to consider favorably this amendment to Title 38 governing beneficiary travel, and an exception for beneficiary travel associated with participation in one of the special disabilities programs. Exceptions should only be granted to veterans who have been accepted for care at the receiving facility. In the case of blind rehabilitation, there is a very formal and detailed application procedure for admission to a Blind Rehabilitation Center. An application must be completed at the veteran's home facility and then forwarded to the appropriate BRC. Clearly, therefore, these are veterans who are patients enrolled at one facility that is unable to provide the necessary care and who have been accepted by a distant VA facility capable of providing the needed services. The cost to expand the travel eligibility to these veterans would certainly be minimal for VA. If the responsibility continues to fall on the veteran, it will surely serve as a deterrent to blind rehabilitation or any other specialized program that requires veterans to travel great distances at their own expense.

When the beneficiary travel law was changed in part to reduce the VA costs, we believe the law and subsequent regulations were intended to address beneficiary travel applicable to veterans traveling to their local VA facilities for care. The special disability programs are only available at a few facilities around the system and require longer and more expensive travel. We strongly believe that if a veteran enrolled in VA health care must be referred to another VA facility other than the primary station to receive the care they need, VA should then be required to pay for those travel expenses. Although these veterans are normally outpatients when referred for blind rehabilitation, we believe for beneficiary travel purposes they should be treated as inter-facility transfers. This form of transfer is not bound by the general beneficiary travel regulations and relieves the veteran of the burden of paying for his or her own travel.

Despite all the potential benefits to be realized from participating in blind rehabilitation, many veterans are not highly motivated to leave home after losing their vision, particularly the elderly. There are several reasons for this reluctance. For one, veterans are anxious about leaving their home and families for a period of six to eight weeks because they remain unconvinced that the proposed rehabilitation would be beneficial. Depression, characterized by feelings of being overwhelmed and without hope, does not generate a high degree of motivation to reach out for help.

The physical and emotional limitations inherent in sight loss are formidable deterrents for veterans seeking blind rehabilitation. Those limitations are severely exacerbated by the veteran's inability to travel to the appropriate BRC. Some blinded veterans are not eligible for Beneficiary Travel and are therefore expected to pay for their own travel to the BRC. These veterans are also required to pay the Social Security co-payment of $800 plus a $10 per diem. In most of these cases, air travel is required because of the long distances involved, and the price of airline tickets are cost prohibitive for these veterans. When motivation is marginal to begin with, the additional financial burden of transportation often proves to be the proverbial last straw causing the veteran to decline rehabilitation.

All blinded veterans, regardless of their service-connection status receive the complex care rate through VERA. According to the recent GAO study, VA Health Care: Allocation Changes Would Better Align Resources with Workload, "Table 3: Complex Care Workload Allocations Compared With Complex Care Expenditures, Fiscal Year 2000,"[1] seven of the eight VISNs that host BRCs indicated an excess in allocation for complex care patients. If VISNs have excess allocations for complex care patients, why not pay for the travel of all veterans who must travel to receive specialized VA services?

BVA is aware that VA costed this bill at $97 million. Further research reveals that this amount is only for the increase in mileage payment alone. VA did not cost the beneficiary travel proposal in this bill. Originally, VA informed BVA that the cost of the mileage increase would be estimated at $1 million per cent proposed—from $.11 to $.34—an increase of $23 million dollars. We would like an explanation as to how this estimate increased so greatly within a matter of days. BVA supports the mileage increase. We understand there are budgetary concerns and suggest that

[1] U.S. General Accounting Office, *VA Health Care: Allocation Changes Would Better Align Resources with Workload,* GAO–02–338 (Washington, DC.: February 28, 2002) pp. 20–21.

the increase be incrementally implemented. This will decrease the effects on the health care budget, but more fairly compensate veterans who have to drive long distances to receive their promised health care. BVA is disappointed with the numbers games being played by VA regarding this bill. We suggest that VA cost the beneficiary travel amendments proposed in this legislation. In the future, BVA requests that VA be more explicit in its testimony when reporting the estimated cost of a bill.

Thank you, once again, for this opportunity to share the views of BVA on this important piece of legislation. VA should be proud of its special disabilities programs, especially blind rehabilitation. VA's blind rehabilitation program is recognized worldwide for its excellent services. These services should not be denied to blinded veterans for any reason. We hope that you will help remove this barrier of unfair travel regulations to ensure equal access to VA health care, especially special disability programs, for all of America's veterans.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF VETERANS' RESEARCH AND EDUCATION FOUNDATIONS (NAVREF)

The National Association of Veterans' Research and Education Foundations (NAVREF) thanks the Committee on Veterans Affairs for the opportunity to submit a statement for the record of the hearing on May 2, 2002, regarding Sections 2 and 3 of S. 2132. NAVREF is a membership organization of the eighty-five VA-affiliated nonprofit research and education corporations (NPCs) authorized by 38 U.S.C. §§ 7361–7368.

NAVREF strongly encourages the Committee to approve S. 2132, Sections 2 and 3 in order to:

1) Clarify that VA medical centers (VAMCs) and NPCs may enter into VA-approved contracts and other forms of agreements for the purpose of facilitating VA research and education; and

2) Provide Federal Tort Claims Act (FTCA) coverage for certain NPC employees.

NAVREF thanks the Committee and its staff for the careful attention given to formulating Sections 2 and 3. Considerable care has been taken to modify the NPC authorizing statute to allow the NPCs to better fulfill their purpose of facilitating VA research and education while at the same time ensuring VA oversight.

S. 2132. SECTION 2. MODIFICATION OF AUTHORITIES ON RESEARCH CORPORATIONS—REGARDING CONTRACTS AND OTHER AGREEMENTS BETWEEN VAMCS AND NPCS

The NPCs exist to facilitate VA's research and education missions, and each year they donate to their affiliated VAMCs research related personnel services, equipment, travel support, construction, and supplies as well as education related services. Last year, these contributions had an aggregate value of $141 million nationally. When it is cost effective and efficient, VAMC research and education programs would like to purchase additional services from NPCs over and above what they can afford to donate. However, to date, the VA Office of General Counsel (OGC) has considered a VA payment for a service provided by an NPC to be a prohibited transfer of VA-appropriated funds. As a result of this interpretation of § 7361(a), the NPCs' ability to facilitate VA research and education has been curtailed.

Section 2 of S. 2132 has been carefully crafted to permit VAMCs to make payments to NPCs pursuant to VA-approved contracts, or other forms of agreements, for services provided by the NPCs to facilitate VA research and education. Please note that an integral feature of Section 2 is that all such agreements would be subject to VA review and approval. NAVREF and its members welcome this requirement to provide mutual assurance that the agreements will withstand rigorous scrutiny.

Agreements executed according to the provisions of Section 2 would allow the NPCs to better fulfill their purpose of facilitating VA research and education. Examples of situations in which VA-approved agreements would facilitate VA research or education include:

1. When a VAMC does not have a technician on staff with the highly technical skills necessary to conduct tests for a research project, the facility could contract with an NPC for the services. The NPC would hire someone to run the tests and would bill the VA project on a per test basis. This would allow VA to pay only for the services it needed.

2. VA cardiac researchers at a VISN 21 facility could contract with an NPC to obtain access to a $1.5 million Sonata Magnetic Resonance scanner. Because the facility and its research program have insufficient VA funds to purchase the scanner and to pay for staff to operate it, the NPC has offered to lease the Sonata, renovate

a VA office to house it and hire staff to operate it. Under S. 2132, Section 2, the VA facility could then contract with the NPC for part-time VA research use of the scanner. To recoup the remaining cost of the lease, the NPC could bill NIH and private sector research projects for scans, and any remaining excess capacity may be made available to university researchers at a reasonable charge.

3. The Education service in a VISN 20 facility could execute a 30-day contract with an NPC to provide meeting planning services for a VA-funded training program on state of the art treatment of diabetes. Lacking a staff member with the skills and time required to administer the conference, the Education service could contract with the NPC to process registrations and fees, arrange and pay for catering, and duplicate and assemble the training materials.

4. Researchers in VISN 7 who lack sufficient funding to purchase a $300,000 confocal microscope could contract with an NPC for use of one. The NPC would lease and staff the microscope. Under a VA-approved contract, the microscope would be available to VA researchers for the time they needed it, and the NPC would contract with the affiliated university to make it available to their researchers for the remaining time.

5. A VAMC could contract with an NPC to efficiently process research patient subject fees and reimbursements for the patients' travel and meal costs. Processing these payments through VA often takes weeks, which is a disincentive for patients to participate in studies.

As demonstrated by these examples, NAVREF anticipates that contracts and other forms of agreements between VAMCs and NPCs often would be used to provide core services for research projects conducted in VA facilities and funded by VA, NIH and other federal agencies, the private sector and other nonprofits. In some cases, these agreements would foster collaboration with affiliated universities as well as other medical institutions in the community at the same time as they would spread the cost of expensive equipment among several users. By employing NPC resources rather than VA funds to make major purchases, VAMCs could avoid substantial upfront costs in favor of paying only for the services they actually need. In addition, VAMCs would be assured of access to high tech equipment and related services that otherwise may not be readily available.

NAVREF also anticipates that agreements would be executed to facilitate VA's education mission when a VAMC wants to hold a conference or training program, but lacks sufficient personnel to process registrations and handle all the logistical details.

Most importantly, such services would be provided by organizations that are motivated by VA's needs, not profit, and that exist solely to serve VA's research and education missions. Further, oversight would be provided by VA review and approval of the agreements that will allow NPCs to provide the necessary services.

S. 2132. SECTION 3. COVERAGE OF RESEARCH CORPORATION PERSONNEL UNDER FEDERAL TORT CLAIMS ACT AND OTHER TORT CLAIMS LAWS

The VA Office of General Counsel has long maintained that NPC employees who have VA without compensation (WOC) appointments and work on VA-approved research projects under the supervision of VA employees are afforded protection against medical malpractice liability under the Federal Tort Claims Act and 38 U.S.C. § 7316, subject to certification by the Attorney General that the employee's work is within the scope of government work. However, in an opinion issued in 2000, the Department of Justice (DOJ) cast doubt on the OGC position by stating that NPC employees are not federal employees for purposes of the FTCA.

In the same opinion, DOJ pointed out that Congress has conferred federal employment status for purposes of FTCA coverage on certain non-federal employees of such organizations as the Thrift Investment Fund, the Arctic Research Commission, the Peace Corps, the Postal Service, the Public Health Service and the Atomic Energy Commission. Similarly, Section 3 of S. 2132 would confer FTCA coverage on certain NPC employees.

Absent approval of Section 3, the March 2000 DOJ opinion puts NPC physicians, nurses, technicians and allied health care professionals working on VA approved research and education at risk of being personally liable for suits alleging negligence or malpractice. Fortunately, the risk appears to be minimal even though in 2001, the corporations cumulatively expended more than $68 million in research related salary expenses, and NAVREF estimates that nationwide, the NPCs have 2,000 research employees. Since Congress authorized the NPCs in 1988, not a single negligence or medical malpractice suit has been filed against an NPC employee. According to OGC, VA-wide there were only 12 research related suits or claims between 1995 and 2000. These ultimately resulted in only five payments totaling $530,000.

Ever since DOJ issued its March 2000 opinion, NAVREF has encouraged NPCs to evaluate each employee's level of risk and when warranted, to purchase private sector medical malpractice insurance accordingly. Reasonably priced medical malpractice coverage for state certified health care workers other than physicians is available. However, certification requirements vary from state to state so not all NPC employees can be covered. Obtaining coverage for physicians is often problematic because VA doctors are not required to be state-certified. When insurance for physicians is available, it can be very expensive and often excludes coverage for research-related care. Until recently, some of the larger corporations purchased a policy from St. Paul Insurance. However, St. Paul recently decided to exit this industry and is neither renewing policies nor writing new ones. To date, NAVREF has not found a reasonably priced alternative provider.

FTCA coverage is warranted for NPC employees for the following reasons:

1. Research and education are among VA's statutory missions and NPC employees may work only on VA-approved research projects and education activities.
2. In performing these duties, NPC personnel often provide care for VA patients in VA facilities and work alongside VA personnel. Therefore, they are vulnerable in the same ways VA employees are vulnerable.
3. NPC employess must have WOC appointments.
4. NPC employees work under the supervision of VA personnel in VA facilities.
5. Work done by NPC employees generally is donated to the VA in support of VA's research and education missions.

Since 1989, VA has maintained that NPC employees with WOC appointments working on VA-approved research under the supervision of VA employees are covered by the FTCA. As a result, an explicit statement to that effect by Congress in S. 2132 would impose no new burden on VA or the Department of Justice. Further, VA General Counsel attorneys maintain that the facts of a case—should one ever accur—are likely to invoke FTCA coverage regardless of the DOJ position. However, the 2000 DOJ opinion raises the degree of uncertainty to an unacceptable level. In the absence of explicit FTCA coverage, NPSs must decide whether to take their chances that the FTCA will cover an employee despite the DOJ opinion; to sharply curtail their activities by only hiring employees with access to reasonably priced private sector insurance; to purchase expensive blanket insurance using funds that would otherwise be used to support research; or to close down.

Congress has already provided FTCA coverage for other organizations that support government missions, and Section 3 of S. 2132 would simply add the NPCs to that list. NAVREF strongly encourages the Committee to approve this coverage for employees of the NPCs—organizations that exist solely to support the VA research and education missions.

Again, NAVREF strongly encourages the Committee to approve Sections 2 and 3 of S. 2 132.

Thank you for considering our views.

May 15, 2002.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Veterans' Affairs,
U.S. Senate,
Washington, DC.

Re: Comments on Pending Benefits-Related Legislation

DEAR SENATOR ROCKEFELLER: Thank you for this opportunity to provide the written testimony of the National Organization of Veterans' Advocates (NOVA) commenting on benefits-related legislation now pending before the Committee.

You have expressed specific interest in NOVA's comments on S. 2079, a bill that you introduced, as well as S. 1905, a bill presenting matters that the Department of Veterans Affairs (DVA) has initiated for possible enactment. We have provided NOVA's comments about these bills in detail further below. In sum, however, NOVA strongly supports the proposed legislation contained in S. 2079. With respect to S. 1905, NOVA strongly opposes one provision contained therein, Section 203 of Title II, which can be interpreted as eliminating an important appellate-rights notice protection currently afforded to veterans-benefits claimants. Minimally, because the meaning of the text of this proposed change is unacceptably confusing, it would require clarification.

In regard to the many other currently pending items of veterans-benefits legislation, NOVA provides specific comments on a selected few of these provisions, which

we believe should be implemented because they would serve to enhance the entitlement of veterans-benefits claimants.

The specific comments of NOVA are as follows:

S. 2079

As a general matter, NOVA supports, on the broadest possible basis, the right of veterans-benefits claimants to seek and receive judicial review of adverse DVA decisions and other agency actions affecting their entitlement to benefits. Consistent with NOVA's position, the thrust of the provisions of S. 2079 would be to expand various aspects of the jurisdiction of

the federal courts to review adverse DVA benefits decisions and actions. Therefore, with great enthusiasm, NOVA supports enactment of all of the provisions contained in S. 2079.

Section 1 of S. 2079 expands the right to judicial review for veterans-benefits claimants by allowing for judicial scrutiny of the DVA's Schedule for Rating Disabilities (SRD), set out at 38 C.F.R., part 4.

Since the inception of the recent era of judicial review of veterans claims, existing law expressly has exempted from such review any actions of the DVA related to the SRD. *See* 38 U.S.C. §§ 7252(b) and 7261. The importance of the SRD to the adjudication of veterans-benefits claims cannot be overstated. The SRD is the source of all the criteria relied upon by the DVA to identify specific disabilities for which claimants can be compensated, as well as the criteria to evaluate their severity, and thus the amount of compensation to be paid as a result. This provision, therefore, if enacted, would for the first time cause the DVA's actions in regard to this crucial aspect of the payment of disability compensation to be subject to judicial review.

While important simply because it would subject the actions of the DVA to adopt or amend provisions of the SRD to judicial scrutiny for the first time, the extent of the change created by this proposed law is rather modest and incremental. For one, it provides that only the United States Court of Appeals for the Federal Circuit may review an action of the DVA to adopt or revise the SRD. In addition, the scope of the Federal Circuit's review of the DVA's actions in such matters is limited to a deferential standard. Only if the Federal Circuit found the DVA's action in adopting or revising a provision of the SRD to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law", or "in excess of statutory jurisdiction, authority or limitations, or in violation of statutory right," could it "hold unlawful and set aside such action."

Despite the limited nature of the Federal Circuit's proposed new jurisdiction to review the DVA's actions with regard to the SRD, it is NOVA's view nonetheless that this provision represents an important expansion of the judicial review rights of veterans-benefits claimants. Accordingly, NOVA strongly supports its enactment into law.

Section 2 of S. 2079 would extend the jurisdiction of the United States Court of Appeals for Veterans Claims to review factual findings of the DVA in benefits decisions.

This specific provision would replace the current standard of review of factual issues used by the veterans' Court, which is extremely limited. At present, the veterans' Court is required to find that a DVA factual finding is "clearly erroneous" prior to reversing such a finding. This current standard is so difficult to satisfy in most cases that the veterans' Court has articulated its view of the standard as prohibiting the Court from reversing a DVA factual finding even if the Court would have reached a different result upon its own de novo review. *See, e.g., Gilbert* v. *Derwinski,* 1 Vet.App. 49, 53 (1990).

Indeed, at present, the DVA is easily able to defeat a veterans-benefits claimant's challenge to one of its factual findings because all that is needed is a "plausible basis" in the record to support the adverse factual finding. *Id.* This standard has greatly contributed to the paucity of decisions by the veterans' Court, measured over its entire 12-years of existence, in which it has reversed erroneous factual findings by the DVA.

This important provision of S. 2079 would replace the veterans' Court's current standard of review of factual findings with the "not reasonably supported by a preponderance of the evidence" test. In other words, this new standard would require the veterans' Court to reverse a factual finding by the DVA if it is "not reasonably supported by a preponderance of the evidence." This change would make the veterans' Court's standard of review of material factual issues consistent with the pro-claimant, non-adversarial standard of review that generally binds the DVA at the agency level of the adjudication process. As a general matter, the DVA is not permitted to deny a veterans-benefits claim unless the "preponderance of the evidence"

is against the claim. *Gilbert,* 1 Vet.App. at 53–54. Upon implementation in the veterans' Court of the standard of review proposed here, the veterans' Court similarly would not be permitted to affirm an adverse material finding of fact by the DVA unless the "preponderance of the evidence" supported such a finding. Because of the great enhancement of the judicial review rights of veterans-benefits claimants this change would create, NOVA strongly supports enactment of this provision of S. 2079.

Section 3 of S. 2079 also provides for an expansion of the right to judicial review for veterans-benefits claimants before the Federal Circuit. At present, the Federal Circuit does not possess plenary jurisdiction to review issues of law presented in decisions of the veterans' Court. Rather, in a particular case, its review authority is limited to review of "any challenge to the validity of any statute or regulation or any interpretation thereof." 38 U.S.C. § 7292(c).

This provision would extend the Federal Circuit's jurisdiction so that an appellant could raise before that federal court a challenge to "a decision" of the veterans' Court whenever that decision involves "a rule of law." This provision, if enacted, would constitute another important enhancement of the right of veterans-benefits claimants to judicial review, and, accordingly, NOVA supports its passage.

Lastly, Section 4 of S. 2079 provides for an amendment to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(b), to allow for the veterans' Court to award attorneys fees and expenses to "non-attorney practitioners" admitted to practice before the veterans' Court on the same basis as for an attorney admitted to practice before the Court. Although this provision does not directly relate to an expansion of a veterans-benefits claimant's right to judicial review, it does enhance the options such a claimant has in regard to representation services before the Court. Therefore, NOVA, whose membership includes both attorneys and qualified non-attorney practitioners, also supports this last provision contained in S. 2079.

As a final matter, in regard to this particular bill, NOVA would point out to the Senate Committee on Veterans' Affairs that each of the four provisions in S. 2079 discussed above are also elements of a similar bill originating in the House of Representatives, H. 4018. The House bill, introduced by Representative Lane Evans, is similarly supported by NOVA for all the same reasons NOVA supports S. 2079. In addition, however, H. 4018 contains two additional provisions not found in S. 2079 that NOVA believes deserves support because these provide further enhancement of the overall rights of veterans-benefits claimants.

The first is a provision that would allow for the interim payment of compensation benefits to a claimant whose appeal has been pending unadjudicated and awaiting a final decision for more than a specified period of time. The second would codify in Title 38 of the United States Code the "expeditious" re-adjudication requirement enacted in the Veterans' Benefits Improvement Act of 1993. Both of these provisions are intended to address the ongoing crisis in the area of veterans benefits caused by the DVA's chronically delayed and erroneous decision-making. The concern about this crisis is shared by NOVA on behalf of its members and their individual clients, as well as for all veterans-benefits claimants. Therefore, NOVA supports these latter two proposed items of legislation contained in H. 4018, and urges that they also be included in any final legislation that is passed to enact the existing provisions of S. 2079.

S. 1905

This bill contains a number of discrete items that would change existing law as deemed important and proposed by DVA. Only three of these provisions require specific comment by NOVA. The first two are proposals to increase benefits for two narrow classes of veterans. The first, at Section 101 of Title I of the bill, is to amend 38 U.S.C. § 1701 to allow for the medical care of newborn children of veterans enrolled in the veterans health care system. The other, at Section 102 of Title I of the bill, is to allow for the provision of outpatient dental care for all veterans who were prisoners of war. Because both of these provisions enhance the array of benefits potentially available to eligible veterans, NOVA supports their enactment.

However, a third item proposed by the DVA in S. 1905, at Section 203 of Title II, is opposed by NOVA as it currently reads. Because this provision may eliminate an important notice protection presently afforded to veterans-benefits claimants, it warrants further critical scrutiny by the Committee.

This provision purports to change 38 U.S.C. § 7266(a), which sets out that a "person adversely affected by [a Board of Veterans' Appeals"] decision shall file a notice of appeal with the [veterans'] Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e)" of Title 38. Section 7104(e)(1) provides, straightforwardly and unambiguously, that the "Board shall promptly

mail a copy of its written decision to the claimant at the last known address of the claimant."

With this revision, the DVA would have Congress strike the current requirement that the Board mail its adverse decision to the claimant in all cases pursuant to Section 7104(e)(1)—"shall promptly mail . . . to the claimant at the last known address of the claimant"—and replace it with the lesser requirement that a "copy of the decision pursuant to section 7104(e) . . . is mailed or sent to the claimant's representative. . . ." Under the proposed change, only "if the claimant is not represented" would the Board be required to have the Board decision "mailed to the claimant."

The language of this change would allow the DVA to satisfy its notice obligations regarding adverse Board decisions through mailing exclusively to the claimant's representative, eliminating the existing requirement that the decision be concurrently mailed to the claimant. As such, this proposed change is adamantly opposed by NOVA. The current procedure, whereby the adverse Board decision is mailed to both the claimant and claimant's representative, maximizes the claimant's potential to exercise his or her right to judicial review of an adverse Board decision. Because the DVA's proposed change would diminish the potential of veterans-benefits claimants to seek judicial review, NOVA does not support this proposal, and urges that it be rejected by the Committee.

S. 1656

This bill, which was introduced by Senator Feingold and Senator Hatch, and referred to the Committee on Veterans' Affairs in November of 2001, remains pending. It is intended to address the ongoing crisis in the DVA's chronically delayed and erroneous adjudication of veterans-benefits claims. Indeed, at Section 2 of the bill, entitled "Findings", the scope and depth of the problem is concisely and clearly set out.

The bill further provides an outline of a proposed mechanism for Congress and DVA to address the problem. The bill would require the DVA, with ongoing Congressional oversight, to create, among other things, a comprehensive plan that would improve the competency of claims adjudicators through education and training, as well as by holding them accountable for the accuracy and timeliness of their decision-making.

Without commenting specifically on the exact mechanism that would be required to implement the provisions of this bill, NOVA agrees with, and supports the goals underlying this proposed legislation. Therefore we believe that the Committee should afford this bill serious consideration, and enact it or some similar vehicle that would address the critical deficiencies that currently plague the veterans-benefits adjudication process.

S. 2237

Finally, NOVA also strongly supports S. 2237, which addresses the issue of disability compensation for veterans with service-connected hearing loss. In particular, NOVA supports the particular provision that would eliminate the existing statutory requirement that any non-service-connected hearing loss in one ear be deemed "normal" for purposes of evaluating the severity of the hearing loss in the other, service-connected ear, except in those cases where the non-service-connected hearing loss is "total." *See* 38 U.S.C. § 1160(a)(3).

Because the sense of hearing is inherently a bi-lateral process, the current law creates an injustice for affected veterans who do not suffer from a total hearing loss in the non-service-connected ear. The rating criteria used by DVA to evaluate the severity of service-connected hearing loss requires that an assessment of the hearing loss in both ears be used, combining the loss in each ear. When the non-service-connected ear is deemed "normal" regardless of the actual level of hearing loss in that ear, the hearing loss in the service-connected ear is artificially under evaluated. Thus, upon application of the rating criteria for hearing loss, many veterans with bi-lateral hearing loss are excluded from receiving compensation, or receive less compensation than they would otherwise if the hearing loss in both ears was service connected.

The validity of the existing interpretation of the statute and how it operates was challenged in the Courts. However, in the seminal case, *Boyer* v. *West,* the Federal Circuit concluded that, despite the apparent disparate treatment of the affected veterans, the Court was constrained from overturning the statute based on deference to Congressional intent. *See* 210 F.3d 1351, 1356 (Fed.Cir. 2000). Therefore, enactment of this proposed legislation is essential to redressing the present inequity in the current law, and NOVA urges that it be enacted.

To conclude, again, on behalf of NOVA's individual members, and the many veterans-benefits claimants we represent before the DVA and the federal Courts, we offer our sincere thanks for this opportunity to provide the Committee with our input on the many important legislative matters pending before you. We look forward to continuing to work with the Committee to enhance and protect the entitlement to benefits that our veterans and their families deserve.

Respectfully submitted,

MICHAEL E. WILDHABER,
Vice President.

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